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DIGEST
OF THE
PUBLISHED OPINIONS
OF THE
ATTORNEYS-GENERAL,
AND OF THE
LEADING DECISIONS OF THE FEDERAL COURTS,
WITH REFERENCE TO
INTERNATIONAL LAW, TREATIES, AND KINDRED SUBJECTS.

REVISED EDITION.

WASHINGTON:
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1877.

P R E F A C E .

In considering questions relating to international law, or arising under treaty provisions, the want of some ready means of reference to the conclusions which have formerly been reached on the same or kindred questions has constantly been experienced.

Without an exhaustive examination, it has been found impossible to ascertain whether, or in what manner, different Attorneys-General have considered similar questions and a ready means of reference to the decisions of the courts on like subjects is not always at hand.

An effort has here been made to give a reference to *all* of the published opinions of the Attorneys-General upon international law, public treaties, or upon such questions as from time to time come before the Department of State, and also to the *leading decisions* of the Federal courts on the same subjects.

Under certain titles, such as "Treaties," "Extradition," an effort has been made to refer to all decisions bearing on the subject.

It is not intended in any case to state what the law is, or to assume to give the effect of any opinion or decision upon any Department of the Government, but simply to refer to what has from time to time been held to be the law by recognized legal authority.

In some instances, different opinions, if not different decisions, herein cited, will be found to be in direct opposition. In some cases this arises from a change in public law and a consequent change of opinion ; in others, from positive differences of opinion on delicate questions. For this reason, both opinions and decisions are cited in the order of their date ; and from the comparatively small number of citations under any particular title, it is believed this will cause no embarrassment.

The Revised Statutes published in 1875 under the authority of Congress are cited as R. S., § —, and the volume of the Treaties to which reference is made is that published at the same time, known as the "Revised Statutes relating to the District of Columbia and Post-Roads—Public Treaties."

The obligations of the undersigned are due to Mr. Charles P. James for valuable assistance ; to Mr. John H. Haswell and Mr. Almont Barnes, of the Department of State ; and to Mr. Clapp, the Government Printer ; and Mr. Brian, the foreman of the Government Printing-Office.

JOHN L. CADWALADER.

DEPARTMENT OF STATE,
December, 1876.

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DIGEST

OF THE

OPINIONS OF THE ATTORNEYS-GENERAL AND OF THE FEDERAL COURTS UPON
INTERNATIONAL LAW AND KINDRED SUBJECTS.

ABSENCE.

See Compensation.

ADVANCES.

See Diplomatic Officers.

ADVERTISEMENTS.

1. Semble, if the provisions of law which require certain contracts to be advertised are disregarded, the contracts, while they remain executory, and without commencement of performance, are subject to be rescinded.

Charles Knap's case, 6 Op., 406, Cushing, (1854.)

2. It is a sufficient objection to an unexecuted contract made by an officer of the Government that he has neglected to comply with an act of Congress requiring that proposals shall precede the letting of the contract.

Case of Janes and others, 10 Op., 416, Bates, (1862.)

3. But after a party has entered into a contract with the Government in good faith, and has so far performed his part of the same that to rescind it or declare it illegal, and so incapable of execution, would subject him to loss and injury, while the Government would yet enjoy the benefits of his labor or expenditure, the contract cannot be avoided or changed, to the injury of the other party, by the Government, on the ground that it was made without advertising for proposals.

Id.

4. The proviso in the act of 3d March, 1875, c. 128, (18 Stat., 342,) making appropriations for the service of the Post-Office Department, was intended to relieve the heads of all the Executive Departments from the requirements of section 3826 of the Revised Statutes respecting the publication of advertisements, notices, and proposals for Virginia, Maryland, and the District of Columbia as well as to provide specifically respecting the publication of mail-lettings by the Postmaster-General for the States and District above mentioned. It is, accordingly, left discretionary with each head of Department whether he will make the publication referred to in that section in one or more papers of the District of Columbia.

Departmental advertisements, 14 Op., 576, Williams, (1875.)

AGENTS.

See also *Contracts*.

1. The United States are not bound by the declarations of their agents, founded upon a mistake of fact, unless it clearly appear that the agent was acting within the scope of his authority, and was empowered in his capacity of agent to make such declaration.

Lee vs. Monroe and Thornton, 7 Cranch, 366.

AGE OF MAJORITY.

1. The international relation of the period of majority in the United States considered.

Baron Gerolt's letter, 8 Op., 62, Cushing, (1856.)

ALASKA.

1. The rights of Hutchinson, Kohl & Co., as purchasers of certain buildings in Alaska from the Russian-American Company, considered.
Case of Hutchinson, Kohl & Co., 14 Op., 302, Williams, (1873.)
2. The use of the land on which the buildings stood, once permitted to the Russian-American Company, was extinguished by the treaty, and did not pass to Hutchinson, Kohl & Co. (Pub. Trs., 671.)
Ib.

ALIEN ENEMY.

1. There is no legal difference, as to a plea of alien enemy, between a corporation and an individual.

Society, &c., vs. Wheeler, 2 Gallison, 105.

2. The existence of war does not prevent the citizens of one belligerent power from taking proceedings for the protection of their own property, in their own courts, against the citizens of the other, whenever the latter can be reached by process.

Lee vs. Rogers, 2 *Sawyer*, 549.

3. A person residing in an enemy's country long enough to acquire a domicile there, is subject to the disabilities of an enemy, so far as his property is concerned.

United States vs. Cargo of the El Telegrafo, 1 *Newberry, Adm.*, 383.

4. A Frenchman, who had resided thirteen years in Mexico, held to have acquired a domicile in the enemy's country, subjecting him, so far as his property was concerned, to all the disabilities of an alien enemy.

Rogers vs. The Amado, 1 *Newberry, Adm.*, 400.

ALIENS.

1. An alien can inherit, carry away, and alienate personal property, without being liable to any *jus detractus*. The sixth article of the old treaty of amity and commerce between the United States and Sweden considered.

Rights of aliens, 1 *Op.*, 275, *Wirt*, (1819.)

2. It is the duty of the President, to whom the care of our foreign relations is committed, to take all lawful measures for the protection of alien subjects of a state with which the United States are at peace, who shall have come within our territory and placed themselves under the safeguard of our laws with the consent of the General and State governments.

Case of two French citizens, 3 *Op.*, 253, *Butler*, (1837.)

3. But, where aliens have suffered violence from citizens of the United States, they can be protected only by the redress to be afforded in the courts and the special interposition of the legislature.

Ib.

4. The State courts only have jurisdiction of the criminal offense in such cases; the circuit court of the United States of a civil action, where the offenders are citizens.

Ib.

5. Until the passage of an act by Congress authorizing the enlistment of aliens into the military service of the United States, such enlistments must be regarded as invalid. Section 11, of the act of 16th March, 1802, (2 *Stat.*, 134,) which forbade the enlistment of any but citizens of the United States, was revived by section 7 of the act of 3 March, 1815, (3 *Stat.*, 225.)

Enlistment of aliens, 3 *Op.*, 671, *Legare*, (1841)

6. An alien may hold, convey, and devise real estate in the District of Columbia.

Letter to Swiss consul Cazenova, 5 Op., 621, Crittenden, (1852.)

7. Officers of the Army employed in recruiting may lawfully enlist persons not naturalized as citizens of the United States. The provision of the act of 1802, limiting enlistments to citizens, has not been re-enacted in any subsequent law, according to my understanding of the statutes.

Enlistment of aliens, 6 Op., 474, Cushing, (1854.)

[It would seem that the reviving clause of the act of 1815 had been overlooked, and that the limit did exist in 1854.]

8. The Government of the United States has constitutional power to enter into treaty-stipulations with foreign governments for the purpose of restricting or abolishing the property-disabilities of aliens or their heirs in the several States.

In re Droit D'Aubaine, 8 Op., 411, Cushing, (1857.)

9. It is clear, by the common law, that an alien can take lands by purchase, though not by descent; or, in other words, he cannot take by the act of law, but he may by the act of the party. This principle has been settled in the year-books, and has been uniformly recognized as sound law from that time. Nor is there any distinction, whether the purchase be by grant or by devise. In either case, the estate vests in the alien, not for his own benefit, but for the benefit of the state; or, in the language of the ancient law, the alien has the capacity to take, but not to hold lands, and they may be seized into the hands of the sovereign. But until the lands are so seized, the alien has complete dominion over the same, * * * and may convey the same to a purchaser. * * * In respect to these general rights and disabilities, there is no admitted difference between alien friends and alien enemies. During war the property of alien enemies is subject to confiscation *jure belli*, and their civil capacity to sue is suspended. But as to capacity to purchase, no case has been cited in which it has been denied; in the Attorney-General *vs.* Wheeden and Shales, Park. Rep., 267, it was adjudged that a bequest to an alien enemy was good, and, after peace, might be enforced. Indeed, the common law, in these particulars, seems to coincide with the *jus gentium*.

Fairfax's devisee vs. Hunter's lessee, 7 Cranch, 603, (619.)

10. An alien mortgagee may maintain a bill to have the debt paid by a sale of the land which had been conveyed to him as security therefor.

Hughes vs. Edwards, 9 Wheaton, 489.

11. A devise of land to trustees, in trust to sell the same and pay the whole proceeds to an alien *cestui que trust*, is, in equity, a bequest

of personalty; and the alien may take and hold the proceeds, and can compel the execution of the trust, even as against the state.

Craig vs. Leslie, 3 *Wheaton*, 563.

12. An alien who becomes naturalized may hold land acquired before his naturalization. A grant by a state to an alien is not void; he may take, though he cannot hold against the state.

Gouverneur's heirs vs. Robertson, 11 *Wheaton*, 332.

13. Neither the Constitution nor acts of Congress require that aliens should reside abroad to entitle them to sue in the courts of the United States.

Breedlove and Robeson vs. Nicolet and Sigg, 7 *Peters*, 413.

14. A law of the State of Louisiana imposing a tax on legacies payable to aliens is not repugnant to the Constitution of the United States. Every state or nation may unquestionably refuse to allow an alien either real or personal property, situated within its limits, either as heir or legatee, and may, if it thinks proper, direct that property so descending or bequeathed shall belong to the state.

Mager vs. Grima, 8 *Howard*, 490.

15. Aliens domiciled in the United States owe a local and temporary allegiance to the Government of the United States; they are bound to obey all the laws of the country, not immediately relating to citizenship, during their residence, and are equally amenable with citizens for any infraction of those laws. Those aliens who, being domiciled in the country prior to the rebellion, gave aid and comfort to the rebellion, were, therefore, subject to be prosecuted for violation of the laws of the United States against treason and for giving aid and comfort to the rebellion.

Carlisle vs. United States, 16 *Wallace*, 148.

16. In the courts of the United States alien friends are entitled to claim the same protection of their rights as citizens.

Taylor vs. Carpenter, 3 *Story*, 458.

[Concerning the right of aliens to maintain suits in the Court of Claims, see *Claims*.]

ALLEGIANCE.

See *Expatriation*.

Naturalization.

1. By a principle of international law, on a transfer of territory by one nation to another, the political relations between the inhabitants of the ceded country and the former government are changed, and new ones arise between them and the new government. The manner in which this is to be effected is ordinarily the subject of treaty. The contracting parties have the right to contract, to

transfer, and to receive, respectively, the allegiance of all native-born citizens; but the naturalized citizens, who owe allegiance purely statutory, when released therefrom are remitted to their original status.

Tobin vs. Walkinshaw, 1 *McAllister*, 186.

2. By the common law, a child born within the allegiance of the United States is born a subject thereof, without reference to the political status or condition of its parents.

McKay vs. Campbell, 2 *Sawyer*, 119.

AMBASSADORS.

See *Diplomatic Officers*.

Public Ministers.

AMERICAN AND SPANISH CLAIMS COMMISSION.

1. The act establishing the Département of Justice does not prohibit the designation by the President of an advocate on the part of the United States under the agreement with Spain of 1871, organizing the American and Spanish Claims Commission. [Pub. Trs., 720.]

Designation of commissioner and advocate, 13 *Op.*, 416, *Akerman*, (1871.)

AMERICAN MERCHANTS.

See *Consular Courts*.

AMERICAN VESSELS.

See *Seamen*.

1. A citizen of the United States may lawfully purchase a merchantship of either of the belligerents, Turkey, Russia, Great Britain, France, or Sardinia; and, if purchased *bona fide*, such ship becomes an American vessel in the sense of American property, although she is not an American vessel in the sense of the registry or enrollment acts; and she is entitled to protection and to the flag of the United States. Although she cannot take out a register, that is because she is foreign-built, not because she is belligerent-built. The question as to what documents such a ship is entitled to, referred to, but not decided.

Letter of British minister, 6 *Op.*, 638, *Cushing*, (1854.)

2. Discussion of jurisdiction over acts on board of ships on high seas and in foreign ports. Crimes committed on board ship on the high seas are triable in the country to which the vessel belongs. In port the local authorities have power to enter upon the vessel for purposes of inquiry universally, but for purposes of arrest only in matters within their jurisdiction. The local authorities have jurisdiction over such acts committed on board a foreign merchant-ship while in port as effect the peace of the port only. The nationality of the actors being of the crew or passengers does not alter the case.

The Atalanta, 8 Op., 73, Cushing, (1856.)

3. Where a gun was fired from an American vessel in the harbor of a foreign port, killing a person on a vessel belonging to natives of the country, held that the offense was committed on board the foreign vessel where the shot took effect.

United States vs. Davis, 2 Sumner, 482.

4. In order to prove that an American vessel has ceased to be such, it is not enough to prove that she was taken abroad and sold and transferred; it must be shown that she was sold and transferred to a foreigner.

United States vs. Gordon, 5 Blatchford, 18.

AMISTAD CASE.

See *Treaties*.

ANCHORAGE DUES.

See *Treaties*.

APPOINTMENTS.

See *Executive Departments*.
Office.

1. The power of appointment under the United States cannot be communicated by act of Congress to persons not named to that end by the Constitution.

Appointment of a commissioner, 8 Op., 41, Cushing, (1856.)

2. The nomination to an office by the President, confirmation by the Senate, signature of the commission, and affixing to it the seal of the United States, are all the acts necessary to render the appointment complete.

Hence, the appointment is not rendered invalid by the subsequent death of the President before the transmission of the commission to the appointee, even where it is necessary that the person appointed should perform certain acts before he can legally enter upon the duties of the office.

United States vs. Le Baron, 19 Howard, 74.

APPROPRIATIONS.

1. The Secretary of State has authority, under the joint resolution of 5th July, 1866, (14 Stat., 362,) to pay the moneys appropriated for the Paris Exposition, to be expended in Europe, in coin.

Paris Exposition, 12 Op., 9, *Stanbery*, (1866.)

2. Under the provisions of the act of 1870, (16 Stat., 251; R. S., § 3690,) balances of appropriations made for the fiscal year 1869-'70, of any description, may be applied to the service of the fiscal year 1870-'71, so far as, 1st, to pay in the latter year expenses properly incurred in the former year, and, 2d, to pay dues upon contracts properly made within the former year, though such contracts be not performed till within the latter year.

Unexpended balances of appropriation, 13 Op., 288, *Akerman*, (1870.)

3. Neither the 5th nor the 7th sections of the act of 1870 (16 Stat., 251; R. S., §§ 3690, 3679) place any restriction upon the use of balances; 1st, where they are from appropriations not made in annual appropriation bills; 2d, where they are from appropriations not made specifically for a particular fiscal year; 3d, where they are from appropriations known as permanent; and, 4th, where they are from appropriations known as indefinite.

Ib.

4. Claims allowed under the act of 1864 (13 Stat., 381; 18 Stat., 75, 222) are not payable from appropriations made for the fiscal year, none of these appropriations seeming to be for that object.

Ib.

5. Appropriations which in terms are for the service of the fiscal year 1870-'71 cannot be used for any other purpose than the payment of the expenses incurred for the service of that year, nor can any money be taken by counter-requisitions [warrants] from such appropriation to settle old accounts.

Ib.

6. Permanent appropriations are those made for an unlimited period; indefinite appropriations are those in which no amount is named.

Ib.

ARREST.

See *Expatriation.*

Extradition.

Privilege from Arrest.

Public Minister.

Servants.

1. Every citizen of the United States is secured by the Constitution against an unreasonable arrest, and to provide against the same magistrates are interdicted from issuing warrants except upon probable cause, supported by oath or affirmation.

Rodney French's case, 2 Op., 266, Berrien, (1829.)

2. The communication of the British minister charging that a master of an American vessel had murdered a British subject on the high seas, together with copies of depositions taken before a justice of the peace of the island of Antigua, are not evidence sufficient to authorize the President to order the arrest of the accused and his confinement for trial.

Id.

ASSETS.

See *Consular Officers.*

ASYLUM.

See *Extradition.*

International Law.

ATTACHÉS.

See *Public Ministers.*

ATTACHMENTS.

1. Money due to an employé of the Government cannot be attached, by the process of a State court, in the hands of a disbursing-officer.

Clinton's case, 10 Op., 120, Bates, (1861.)

2. Money in the hands of a disbursing-officer of the United States, though due and payable by him to a private person, cannot be attached by process out of a State court.

Buchanan vs. Alexander, 4 Howard, 20.

AWARDS.

See *Indemnification.*
Treaties.

1. An award under the 7th article of the treaty with Great Britain of 1794, (Pub. Trs., 273) to several persons collectively, is conclusive upon the matter so far that the right to transfer is vested in all the persons in favor of whom it is made; and if those concerned have neglected to have inserted in it the amount of their respective interests, or if they disagree as to their several proportions, the embarrassments are attributable to themselves. The Government cannot undertake to decide among them.

Case of the Somerset, 1 Op., 153, Breckenridge, (1805.)

2. An award under the convention with Peru of 1863, (Pub. Trs., 628,) "payable in current money of the United States," may legally be paid either in Treasury-notes or in specie.

Montano's case, 11 Op., 52, Bates, (1864.)

3. Where an award was made under the treaty with New Granada of 1857, (Pub. Trs., 564,) held that the political department of the government could not refer the case to the commission constituted under the convention with Colombia of February 10, 1864, (Pub. Trs., 158,) without claimant's consent.

Gibbes's case, 13 Op., 19 Hoar, (1869.)

4. Under the treaty with Spain of 1819, (Pub. Trs., 712,) the commissioner had power to decide conclusively upon the amount and validity of claims, but not upon the conflicting rights of parties to the sums awarded by him.

Comegys vs. Vasse, 1 Peters, 193.

5. Under the act of Congress constituting a board of commissioners to pass on claims, provided for by the treaty with France of 1831, (Pub. Trs., 245,) the decision of the board between conflicting claimants is not conclusive, and the question of their respective titles is fully open to be adjudicated by the courts.

Frevall vs. Bache, 14 Peters, 95.

6. The award of commissioners under the act of 1849, (9 Stat., 393,) passed to carry into effect the convention with Mexico of 1848, (Pub. Trs., 492,) does not finally settle the equitable rights of third persons to the money awarded. It makes, however, a legal title to the person recognized by the award as the owner of the claim, and if he also have equal equity, his legal title cannot be disturbed.

Judson vs. Corcoran, 17 Howard, 612.

7. An act of Congress referring a claim against the Government to an officer of one of the Executive Departments to examine and adjust,

does not, even though the claimant and Government act under the statute, and the account is examined and adjusted, make the case one of arbitrament and award, in the technical sense of these words, so as to bind either party as by submission to award. Hence a subsequent act, repealing the one making the reference, (the claim not being yet paid,) impairs no right, and is valid.

Gordon vs. United States, 7 Wallace, 488.

8. Where the Court of Claims was directed to make an examination into a claim against Mexico, and ascertain whether it was embraced within the terms of the treaty of 1848 (Pub. Trs. 492) and was authorized to fix and determine the amount which should be paid, and did so: Held that the matter referred to the Court of Claims was the ascertainment of a particular fact, to guide the Government in the execution of treaty stipulations, and that the determination of the court cannot be reviewed in the Supreme Court.

Ex parte Atocha, 17 Wallace, 439.

9. Where a special mode is provided for obtaining compensation, such as by statute or by treaty, or where the power of assessing or deciding on the questions is given to a special tribunal, the remedies specially provided can alone be pursued, and no action in the premises can be maintained in the Court of Claims.

Meade's case, 2 C. Cls., 228; *affirmed*, 9 Wallace, 691.

BALANCES.

See *Appropriations*.

BARRATRY.

See *Crimes*.

BAYS.

See *Neutral Territory*.

BELLIGERENTS.

See *Civil War*.

International law.

Neutrality.

Neutral Territory.

Belligerent ships of war, privateers, and the prizes of either, are entitled, on the score of humanity, to temporary refuge in neutral waters from casualties of the sea and land.

Case of The President, 7 Op., 123, Cushing, (1855.)

2. By the law of nations, belligerent ships of war, with their prizes, enjoy asylum in neutral ports for the purpose of obtaining supplies or undergoing repairs, according to the discretion of the neutral sovereign, who may refuse the asylum absolutely, or grant it under such conditions of duration, place, and other circumstances, as he shall see fit, provided that he must be strictly impartial in this respect toward all the belligerent powers.

Id.

3. Where the neutral state has not signified its determination to refuse the privilege of asylum to belligerent ships of war, privateers, or their prizes, either belligerent has a right to assume its existence and enter upon its enjoyment, subject to such regulations and limitations as the neutral state may please to prescribe for its own security.

Id.

4. The United States have not, by treaty with any of the present belligerents, bound themselves to accord asylum to either; but neither have the United States given notice that they will not; and of course our ports are open, for lawful purposes, to the ships of war of either Great Britain, France, Russia, Turkey, or Sardinia. So that when a British vessel of war had brought a prize into the harbor of San Francisco, and on a petition presented by persons, alleging that they were unlawfully detained on the prize-vessel, a *habeas corpus* was issued from a State court in California, which was duly served. Held, the court had no jurisdiction, and the officer was not bound to obey the writ.

Id.

5. Neutral muniments, however regular and formal, if colorable only, do not affect belligerent rights.

The Rugen, 1 *Wheaton*, 61.

6. The United States not having acknowledged the existence of a Mexican republic or state at war with Spain, the Supreme Court does not recognize as legal any acts done under the flag and commission of such republic or state.

The Nueva Anna and Liebre, 6 *Wheaton*, 193.

7. California, or the port of San Francisco, had been conquered by the arms of the United States as early as 1846. Shortly afterward, the United States had military possession of all of Upper California. Early in 1847, the President, as constitutional commander-in-chief of the Army and Navy, authorized the military and naval commander of our forces in California to exercise the belligerent rights of a conqueror, to form a civil government for the conquered country, and to impose duties on imports and tonnage as

military contributions for the support of the government, and of the army which had the conquest in possession. * * *

It cannot be doubted that these orders of the President, and the action of our Army and Navy commander in California, in conformity with them, was according to the law of arms and the right of conquest, or that they were operative until the ratification and exchange of a treaty of peace. Such would be the case upon general principles in respect to war and peace between nations.

Cross vs. Harrison, 16 Howard, 190.

8. The United States, in the enforcement of their constitutional rights against armed insurrection, have all the powers, not only of a sovereign, but also of the most favored belligerent.

Lamar vs. Browne, 92 U. S. R., S. C., 187.

BILLS OF EXCHANGE.

1. Bills of exchange may be indorsed by an attorney-in-fact, having competent authority derived from a power.

Indorsement of bills, 1 Op., 188, Rush, (1816.)

2. When the United States, by their authorized officers, become a party to negotiable paper, they incur all the responsibilities of individuals who are parties to such instruments. (See *United States vs. Bank of the Metropolis*, 15 Peters, 377.)

Concerning liability of Departments, 4 Op., 90, Legaré, (1842.)

3. Where a minister is authorized to draw upon foreign bankers for his salary, and his draft brings a premium, he is chargeable with such premium, and holds it in trust for the Government.

Case of James Semple, chargé to New Granada, 4 Op., 295, Nelson, (1843.)

4. The Government, being bound to pay a minister a stipulated salary, must make that amount available to him at the place of his foreign residence, but is entitled to whatever the minister receives more than his salary, in the fiscal arrangements for making it available.

Id.

5. The Government is liable for costs and damages upon a draft drawn by its direction upon a banker abroad by a minister for his salary and protested for non-payment. Having devised the method of making salaries available to ministers and agents abroad, and having instructed them to draw upon a particular banking-house, the Government is bound to make reparation for any damages

sustained in the way of costs by the non-acceptance or non-payment of the drafts.

Id

6. In the case of Mr. Semple, chargé d'affaires to New Granada, who had drawn a draft for his salary, which was dishonored at the banking-house in London, and the holder subjected to delay thereby, and the drawer to payment of interest: Decided, that the Government is liable for such interest; and that Mr. Semple is liable to account to the Government for interest on the amount over and above his salary realized by him on the negotiation of such draft from the time he was notified of the mistake.

Id., (299.)

7. Whether the Government is liable for the costs and damages occasioned by the non-acceptance of a draft drawn by the chargé d'affaires of the United States at Lima, depends upon whether he was authorized to draw it, and whether its non-acceptance was the mistake or fault of the Government. If he were authorized to draw, and the Government were at fault, the Department should make good the damages and costs to which he became liable on the return of his bill.

Larned's case, 2 *Op.*, 504, *Taney*, (1832.)

8. It is the duty of the Government to provide a way to make the salary and expenses of a minister abroad good to him at the capital of his residence.

Case of Mr. Wise, minister at Rio, 4 *Op.*, 506, *Mason*, (1846.)

9. If a minister be directed to draw on London for his salary and expenses, and there shall be a loss on the sale of his bills, it is the duty of the Government to make such loss good to him.

Id.

10. Where a draft was legally drawn by a purser in California on the Navy Department, and indorsed to the order of B, who presented it for payment on April 5, 1850, but it was not paid until 9th August following: Held, that B, having accepted payment and surrendered the bill, has no claim for interest and twenty per cent. damages.

Beers's case, 5 *Op.*, 444, *Crittenden*, (1851.)

11. Such bill is to be considered as a foreign bill of exchange, and a protest was necessary before even the drawer or indorser could be holden for damages.

Id.

12. The question whether the United States will pay according to their original tenor drafts drawn by the Mexican government, under

the Mesilla convention, or suspend the payment at the subsequent request of that government, is matter of political, not of legal determination.

Payment of drafts, 7 Op., 599, Cushing, (1855.)

13. Where the Mexican government while administered by President Santa Anna drew a series of drafts under the Mesilla convention in favor of citizens of the United States on account of advances made by them, which, being in anticipation of the day of payment due, were not paid: Held, that it was a political and not a legal question whether the request of the new administration of the Mexican Republic that the drafts should be considered of no effect should be observed or not. The rule between individuals in a similar case does not apply.

Id.

14. As a general rule, when the Government, by its authorized agent, becomes a party to negotiable paper, it has all the rights, and incurs all the responsibilities, of other parties to such instruments. But exceptions to this rule may become established in the practice of different departments of the Government.

Whitman's case, 8 Op., 1, Cushing, (1856.)

15. Wherever the Government of the United States, through its lawfully-authorized agents, becomes the holder of a bill of exchange, it is bound to use the same diligence, in order to charge the indorser, as in a transaction between private individuals.

United States vs. Barker, 12 Wheaton, 559.

16. If the United States, through their authorized officer, accept a bill of exchange, they are bound for its payment to a *bona-fide* holder for value, whatever may have been the equities as between them and the drawer.

United States vs. Bank of the Metropolis, 15 Peters, 377.

17. An instrument, though in the form of a bill of exchange drawn by one government on another, is not governed by the law merchant, and therefore is not subject to protest and consequential damages.

United States vs. Bank of the United States, 5 Howard, 382.

18. The Government of the United States has a right to use bills of exchange in conducting its fiscal operations, as it has the right to use any other appropriate means for accomplishing its legitimate purposes.

The Floyd acceptances, 7 Wallace, 666.

19. When the Government becomes a party to such a bill, it is bound by the same rules in determining its rights and liabilities as individuals are.

Id.

20. As the United States can only become a party to a bill of exchange by the action of an officer or other authorized agent of the Government, the authority of the officer or agent may be inquired into, as in the case of the agent of an individual.

Ib.

21. This authority, in case of bills of exchange, depends upon the same principles that determine such authority in other contracts, and is not aided by the doctrine that when once lawfully made, negotiable paper has a more liberal protection than other contracts in the hands of innocent holders.

Ib.

22. Under our system of government, the powers and duties of all its officers are limited and defined by laws, and generally by acts of Congress.

Ib.

23. As there is no express authority to be found for any officer to draw or accept bills of exchange, such authority can only exist when these are the appropriate means of carrying into effect some other power belonging to such officer under his prescribed duties.

Ib.

24. It does not follow that because an officer may lawfully issue bills of exchange for some purposes, he can in that mode bind the Government in other cases where he has no such authority.

Ib.

25. As under existing laws there can be no lawful occasion for an officer to accept drafts on behalf of the Government, such acceptances cannot bind it, though there may be occasions for drawing or paying drafts which may bind the Government.

Ib.

26. The bonds and Treasury-notes of the United States, payable to the holder or bearer at a definite future time, are negotiable paper, and their transferability is subject to the commercial law of other paper of that character.

Vermilye & Co. vs. Adams Express Company, 21 Wallace, 138.

27. Where such paper is overdue, a purchaser takes subject to the rights of antecedent holders to the same extent as in the case of other paper bought after its maturity.

Ib.

28. No usage or custom among bankers dealing in such paper can be proved in contravention of this rule of law. They cannot in their own interests, by violations of the law, change it.

Ib.

29. It is their duty, when served with notice of the loss of such paper by the rightful owner after maturity, to make memoranda

or lists, or adopt some other reasonable mode of reference, where the notice identifies the paper, to enable them to recall the service of notice.

Ib.

30. Hence, Treasury-notes of the United States, stolen from an express company and sold for value after due in the regular course of business, may be recovered of the purchaser by the express company, which had succeeded to the right of the original owner.

Ib.

BLOCKADE.

1. Where an American vessel had entered and cleared from a port under blockade, and, while returning to New Orleans, was captured by a vessel belonging to the French blockading squadron, from which the captain of the former rescued her and brought her to her destination, the port of New Orleans; and demand, subsequently, being made of the executive to deliver up the vessel and cargo, both on account of the said breach of blockade and rescue: Held, that the captors have no right of property in said vessel and cargo, and that the liability of the vessel to condemnation, if it ever existed, has ceased by the termination of her voyage at the port of her destination.

Case of the Lone, 3 Op., 377, Grundy, (1838.)

2. Held, moreover, that the case called for a judicial decision settling certain questions of fact concerning the legality of the blockade, capture, &c., before the Executive can act.

Ib.

3. Independently of this, there is no constitutional right vested in the Executive to deliver up the property of an American citizen, claimed by him as his own, and in his actual possession, and not condemned, nor legally adjudged to belong to another.

Ib.

4. After a regular condemnation of a vessel and cargo in a prize-court for breach of blockade, the President cannot remit the forfeiture and restore the property or its proceeds to the claimant.

Effect of pardon, 10 Op., 452, Bates, (1863.)

5. The act of dispatching an American vessel, in ballast, from a port of the United States, with an immediate destination to a neutral, and an ulterior destination to a blockaded port, with a cargo taken in at such neutral port, is an offense against the United States under section 2 of act 1862, (12 Stat., 590; R. S., § 5334.)

Case of blockade runners, 10 Op., 513, Coffey, ad. int., (1863.)

6. A ship warranted to be American is impliedly warranted to conduct as American, and an attempt to enter a blockaded port, knowing it to be blockaded, forfeits that character.

Fitzsimmons vs. Newport Ins. Co., 4 Cranch, 185, [200.]

7. Under the treaty with Great Britain of 1794, art. 18, (Pub. Trs., 278,) an intention to enter a blockaded port is not cause for condemnation.

Ib.

8. That a belligerent may lawfully blockade the port of his enemy is admitted. But it is also admitted that this blockade does not, according to modern usage, extend to a neutral vessel found in port, nor prevent her coming out with the cargo which was on board when the blockade was instituted. If, then, such a vessel be restrained from proceeding on her voyage by the blockading squadrou, the restraint is unlawful.

Olivera vs. Union Insurance Co., 3 Wheaton, 194.

9. Neutrals may question the existence of a blockade, and challenge the authority of the party which has undertaken to establish it.

Prize Cases, 2 Black, 635.

10. One belligerent engaged in actual war has a right to blockade the ports of the other, and neutrals are bound to respect that right.

Ib.

11. To justify the exercise of this right and legalize the capture of a neutral vessel for violating it, a state of actual war must exist, and the neutral must have knowledge or notice that it is the intention of one belligerent to blockade the ports of the other.

Ib.

12. To create this and other belligerent rights, as against neutrals, it is not necessary that the party claiming them should be at war with a separate and independent power; the parties to a civil war are in the same predicament as two nations who engage in a contest and have recourse to arms.

Ib.

13. It is a settled rule that a vessel in a blockaded port is presumed to have notice of a blockade as soon as it commences.

Ib.

14. A blockade may be made effectual by batteries on shore as well as by ships afloat, and, in case of an inland port, may be maintained by batteries commanding the river or inlet by which it may be approached, supported by a naval force sufficient to warn off innocent and capture offending vessels attempting to enter.

The Circassian, 2 Wallace, 135.

15. The occupation of a city by a blockading belligerent does not terminate a public blockade of it previously existing, the city itself being hostile, the opposing enemy in the neighborhood, and the occupation limited, recent, and subject to the vicissitudes of war. Still less does it terminate a blockade proclaimed and maintained not only against that city, but against the port and district commercially dependent upon it and blockaded by its blockade.

Id.

16. A public blockade—that is to say, a blockade regularly notified to neutral governments, and, as such, distinguished from a simple blockade, or such as may be established by a naval officer acting on his own discretion or under direction of his superiors—must, in the absence of clear proof of a discontinuance of it, be presumed to continue until notification is given by the blockading government of such discontinuance.

Id.

17. A vessel sailing from a neutral port with intent to violate a blockade is liable to capture and condemnation as prize from the time of sailing.

Id.

18. The blockade of the coast of Louisiana, as established there, as on the rest of the coast of the Southern States generally by the proclamation of April 19, 1861, (12 Stat., 1258,) was not terminated by the capture of the forts below New Orleans in April, 1862, by Commodore Farragut, and the occupation of the city by General Butler on May 6, 1862, and the proclamation of the President of May 12, 1862, (12 Stat., 1263,) declaring that after June 1 the blockade of the port of New Orleans should cease. Hence it remained in force at Calcasieu, on the west extremity of the coast of Louisiana, as before.

The Baigorry, 2 Wallace, 474.

19. A blockade, once regularly proclaimed and established, will not be held to be ineffective by continual entries in the log-book, supported by testimony of officers of the vessel seized, that, the weather being clear, no blockading-vessels were to be seen off the port from which the vessel sailed.

The Andromeda, 2 Wallace, 481.

20. Where a vessel knows of a blockade when she sails, and has no just reason to suppose it has been discontinued, her approach to the mouth of a blockaded port for inquiry is itself a breach of the blockade, and subjects both vessel and cargo to seizure and condemnation.

The Cheshire, 3 Wallace, 231, [235.]

21. Mere sailing for a blockaded port is not an offense; but where the vessel has a knowledge of the blockade, and sails for the blockaded port with the intention of violating it, she is clearly liable to capture.

The Admiral, 3 Wallace, 604.

22. A blockade is not to be extended by construction.

The Peterhoff, 5 Wallace, 28.

23. The mouth of the Rio Grande was not included in the blockade of the ports of the rebel States, set on foot by the National Government during the late rebellion; and neutral commerce with Matamoros, a neutral town on the Mexican side of the river, except in contraband destined to the enemy, was entirely free.

Ib.

24. *Semble*, that a belligerent cannot blockade the mouth of a river occupied on one bank by neutrals with complete rights of navigation.

Ib.

25. A vessel destined for a neutral port with no ulterior destination for the ship, or none by sea for the cargo to any blockaded place, violates no blockade.

Ib.

26. A neutral, professing to be engaged in trade with a neutral port, under circumstances which warrant close observation by a blockading-squadron, must keep his vessel, while discharging or receiving cargo, so clearly on the neutral side of the blockading-line, as to repel, so far as position can repel, all imputation of an intent to break the blockade. Neglect of that duty may well justify capture and sending in for adjudication; though, in the absence of positive evidence that the neglect was willful, it might not justify a condemnation.

The Dashing Wave, 5 Wallace, 170.

27. A neutral vessel, at anchor, completely laden with a neutral cargo, on the neutral side of a river dividing neutral from hostile water, washing a blockaded coast, was captured as being subject to just suspicion of an intent to break the blockade. The captain of the vessel (who was, however, absent at the time of capture) and the mate, being examined *in preparatorio*, testified that she was in neutral water when captured; a stevedore, yet on board, that she had drifted to the place where she was taken under stress of weather; he not knowing whether, when captured, she was in neutral water or not: Held, that this preliminary testimony warranted restoration.

The Teresita, 5 Wallace, 180.

28. A British vessel captured during the rebellion and our blockade of the southern coast, by an American war-steamer, on her way from England to Nassau, N. P., condemned as intending to run the blockade; Nassau being a port which, though neutral within the definition furnished by international law, was constantly and notoriously used as a port of call and transshipment by persons engaged in systematic violations of blockade, and in the conveyance of contraband of war; the vessel and cargo being consigned to a house well known, from previous suits, to the court, as so engaged; the second officer of the vessel, and several of the seamen, examined *in preparatorio*, testifying strongly that the purpose of the vessel was to break the blockade; and the owner, who was heard, on leave given to him to take further proof touching the use he intended to make of the steamer after arrival in Nassau, and in what trade or business he intended she should be engaged, and for what purpose she was going to that port, saying and showing nothing at all on those points.

The Pearl, 5 Wallace, 574.

29. The liability to confiscation, which attaches to a vessel that has contracted guilt by breach of blockade, does not attach to her longer than until the end of her return voyage.

The Wren, 6 Wallace, 582.

30. To justify a vessel of a neutral in attempting to enter a blockaded port, she must be in such distress as to render her entry a matter of absolute and uncontrollable necessity.

The Diana, 7 Wallace, 354.

31. Where, in time of war, a foreign vessel, availing herself of a proclamation of the President of May 12, 1862, entered the port of New Orleans, the blockade of which was not removed but only relaxed in the interests of commerce, she thereby assented to the conditions imposed by the proclamation, that she should not take out goods contraband of war, nor depart until cleared by the collector of customs according to law.

United States vs. Diekelman, 92 U. S. R., S. C., 520.

32. It seems that by the true construction of the proclamation of the President of April 19, 1861, only those who are ignorant of the blockade are entitled to the warning and indorsement mentioned in the proclamation.

The Revere, 2 Sprague, 107.

33. As against the rebels, the United States has both sovereign and belligerent rights. In establishing the blockade, it has exercised only belligerent rights, and as a sovereign, it might, by a municipal regulation, have interdicted all commerce with ports in the States of the insurgents.

Ib.

34. A seizure of a vessel for violation of a blockade may be lawful, if made by a national vessel, though such vessel be not part of the blockading force.

The Memphis, Blatchford's Prize Cases, 260.

BONDS.

See *Consular Officers.*
Sureties.

1. A bond, to be accepted by the Government, ought to be executed by the obligees, and not by their attorney.

Sombrero Island, 9 Op., 128, Black, (1857.)

2. A bond voluntarily given by a disbursing-officer to the United States through the proper department, to secure the faithful performance of his duties, is a valid contract, though the taking of such a bond may not be prescribed by any act of Congress.

United States vs. Tingey, 5 Peters, 115.

3. But no officer of the Government has the right to require from any subordinate officer, as a condition of his holding office, that he should execute a bond with a condition different from that prescribed by law; and a bond thus obtained is void.

Ib.

4. Official bonds cover not merely duties imposed by existing law, but duties belonging to and naturally connected with the office or business in which the bonds are given, imposed by subsequent law; provided, however, that the new duties have relation to such office or business.

United States vs. Singer, 15 Wallace, 112, [122.]

BOUNDARIES.

1. When a river is the line of *arcifinious* boundary between two nations, by a treaty, its natural channel so continues, notwithstanding any changes of its course by accretion or decretion of either bank; but if the course be changed abruptly into a new bed by irruption or avulsion, then the river-bed becomes the boundary. [The principle applied to the report of the commissioners for determining the boundary between the Mexican Republic and the United States.]

Boundaries on the Rio Bravo, 8 Op., 175, Cushing, (1856.)

2. The true geographical boundaries of the Isthmus of Panama not being considered in connection with a grant to build a railroad, need not extend on the north to the Costa Rica line, nor to include the Isthmus of Chiriqui.

Isthmus of Panama, 9 Op., 391 Black, (1859.)

3. When a great river is the boundary between two nations or States, if the original property is in neither and there be no convention respecting it, each holds to the middle of the stream. But where a State which is the original proprietor grants the territory on one side only, it retains the river within its own domains, and the newly-erected State extends to the river only. In such case the lower-water mark is its boundary, whether the fluctuations in the stream result from tides or from an annual rise and fall.

Handly vs. Anthony, 5 Wheaton, 374.

4. In a controversy between the United States and a foreign sovereign as to boundary this court must follow the decision of that Department of the Government which is intrusted by the Constitution with the care of its foreign relations, especially if sanctioned by the legislative power.

Foster vs. Neilson, 2 Peters, 253.

5. It is a sound principle of national law, and applies to the treaty-making power of this Government, whether exercised with a foreign nation or an Indian tribe, that all questions of disputed boundaries may be settled by the parties to the treaty.

Latimer vs. Poteet, 14 Peters, 14.

CALIFORNIA.

1. California, or the port of San Francisco, had been conquered by the arms of the United States as early as 1846. Shortly afterward the United States had military possession of all of Upper California. Early in 1847 the President, as constitutional Commander-in-Chief of the Army and Navy, authorized the military and naval commander of our forces in California to exercise the belligerent rights of a conqueror, and to form a civil government for the conquered country, and to impose duties on imports and tonnage, as military contributions for the support of the Government and of the Army which had the conquest in possession. * * *

No one can doubt that these orders of the President, and the action of the Army and Navy commanders in California, in conformity with them, were according to the law of arms and the right of conquest, or that they were operative until the ratification and exchange of a treaty of peace. Such would be the case upon general principles in respect to war and peace between nations.

Cross vs. Harrison, 16 Howard, 190.

2. The tribunals of the United States, in passing upon the rights of the inhabitants of California to the property they claim under grants from the Spanish and Mexican governments, must be governed by the stipulations of the treaty, the law of nations, the laws, usages, and customs of the former government, the principles of equity, and the decisions of the Supreme Court, so far as they are applicable. They are not required to exact a strict compliance with every legal formality.

United States vs. Anguisola, 1 Wallace, 352.

3. The cession of California to the United States did not impair the rights of private property. These rights were consecrated by the law of nations and protected by the treaty of Guadalupe Hidalgo. The act of March 3, 1851, to ascertain and settle private land-claims in the State of California, was passed to assure to the inhabitants of the ceded territory the benefit of the rights thus secured to them. It recognizes both legal and equitable rights, and should be administered in a liberal spirit.

United States vs. Moreno, 1 Wallace, 400.

4. The authority and jurisdiction of Mexican officers in California are regarded as terminating on the 7th of July, 1846. The political department of the Government has designated that day as the period when the conquest of California was completed and the Mexican officers were displaced, and in this respect the judiciary follows the action of the political department.

United States vs. Yorba, 1 Wallace, 412, [423.]

CAPTURE.

1. Notwithstanding active hostilities had ceased in Georgia, cotton, although private property, seized there by the military forces of the United States, in obedience to an order of the commanding general, during their occupation and actual government of that State, was taken from hostile possession within the meaning of that term, and was, without regard to the *status* of the owner, a legitimate subject of capture.

Lamar vs. Browne, 92 U. S. R., S. C., 187.

2. What shall be the subject of capture, as against an enemy, is always within the control of every belligerent. It is the duty of his military forces in the field to seize and hold that which is apparently so subject, leaving the owner to make good his claim as against the capture, in the appropriate tribunal established for that purpose. In that regard they occupy on land the same position that naval forces do at sea.

3. Unless restrained by governmental relations, the capture of movable property on land changes the ownership of it without adjudication.

Id.

4. The capture of a vessel for violation of blockade may be lawful, if made by a national vessel, though the latter be not part of the blockading force.

The Memphis, Blatchford's Prize Cases, 260.

5. If the vessel arrested was acting in violation of public law, she is liable to be tried and condemned therefor in behalf of the United States, whether the persons or means employed in the seizure had authority to make it or not.

The Ouachita, Blatchford's Prize-Cases, 306.

CAPTURE AND PRIZE.

See Treaties.

1. Captures must be determined upon competent evidence, and no rules for determining the competency of such evidence are more proper for the use of the executive department than those which prevail in the courts of admiralty.

The William, 1 Op., 40, Bradford, (1794.)

2. A captured vessel must be brought within the jurisdiction of the country to which the captor belongs before a regular condemnation can be awarded.

British ship John, 1 Op., 78, Lee, (1797.)

3. Where a vessel, alleged to be Danish property, was seized as French property, on the south side of the island of St. Domingo, and whilst proceeding for an examination under the protection of the American flag, was seized by a British armed ship and taken into Jamaica and there condemned, and a claim is made by the Danish subject upon the Government of the United States for compensation: Held, that the first captors were not liable for the first capture and detention for examination, there being probable cause for the seizure, nor for the second capture; and the Government of the United States was not bound for the unlawful captures of its subjects.

The Mercator, 1 Op., 106, Lincoln, (1802.)

4. The word "captured," as used in the fourth article of the treaty with France of 1800, (Pub. Trs., 225, expired by limitation,) as a technical and descriptive term, does not include the meaning and ought not to be construed to have the effect of the term "recaptured" in the sense of the treaty.

Case of a Portuguese brig, 1 Op., 111, Lincoln, (1802.)

5. The property of an ally recaptured is incapable of being condemned, in the sense in which this term is used in the treaty with France of 1800. (Pub. Trs., 225, expired by limitation.)

Id.

6. Where a French vessel was captured and condemned as lawful prize prior to the treaty with France of 1800, (Pub. Trs., 224, expired by limitation,) and one moiety had been paid to the captors and the other to the United States, after the signing of the treaty, and on hearing before the Supreme Court on writ of error, the decree of the circuit court had been reversed, and the vessel, &c., had been ordered to be restored, and pursuant thereto the moiety of the United States had been paid over and a claim made for the other moiety which had been paid to the captors: Held, that the United States are not liable for such moiety.

The schooner Peggy, 1 Op., 114 *Lincoln*, (1802.)

7. On a reconsideration of the case referred to in the preceding opinion and examination of the opinion, delivered by the Supreme Court, giving a judicial interpretation of the treaty referred to, the preceding opinion is substantially re-affirmed.

The schooner Peggy, 1 Op., 119, *Lincoln*, (1802.)

8. Proceedings in the vice-admiralty court at St. Domingo are nullities, for the reason that the court is not legally constituted.

The vice-admiralty court at St. Domingo, 5 Op., 689; *appendix*, *Lee*, (1798.)

9. The condemnation of a vessel and cargo in a prize-court is not a criminal sentence. No person is charged with an offense, and so no person is in a condition to be relieved and reinstated by a pardon.

Effect of pardon, 10 Op., 452, *Bates*, (1863.)

10. After a regular condemnation of a vessel and cargo in a prize-court, for breach of blockade, the President cannot remit the forfeiture and restore the property or its proceeds to the claimant.

Id.

11. Section 2 of the prize act of 1863, (12 Stat., 759,) authorizing the taking by the Government of any captured property and the deposit of its value in the Treasury, subject to the jurisdiction of the prize-court in which proceedings may be instituted for condemnation of the property, is a valid exercise of the power of Congress to make rules concerning captures.

Lord Lyons's communication concerning prizes, 10 Op., 519, *Bates*, (1863.)

12. The provision of that section is not in conflict with the public law of war, and does not impair the just rights of neutrals under that law.

Id.

13. But if it were thus in conflict with public law, it would be none the less binding upon the courts of the United States; though such conflict might lead to diplomatic reclamations, and possibly to war.

Ib.

[NOTE.—The act of 1863 was repealed by act 1864, (13 Stat., 306,) and the latter was embodied in the Revised Statutes. The act of 1864 did not expressly provide for, but assumes, the existence of the right of the Government to appropriate prizes.]

14. The capture of a vessel of a country at peace with the United States, made by a vessel fitted out in one of our ports and commanded by one of our citizens, is illegal. If a privateer, duly commissioned by a belligerent, collude with a vessel so fitted out and commanded, to cover her prizes and share with her their proceeds, such collusion is a fraud on the law of nations.

Talbot vs. Janson, 3 Dallas, 133.

15. In 1799 there was a limited state of hostilities between this country and France, and the capture of a private armed vessel, officered and manned by Frenchmen, and sailing under the French flag, was lawful, though the vessel was the property of a neutral, from whom the French possessors had captured her.

Talbot vs. Seeman, 1 Cranch, 1.

16. It is a universal principle, which applies to those engaged in a partial as well as to those engaged in a general war, that where there is probable cause to believe the vessel met with at sea is in the condition of one liable to capture, it is lawful to take her, and subject her to the examination and adjudication of the courts.

Ib. 31, 32.

17. The law of prize is part of the law of nations. In it a hostile character is attached to trade, independently of the character of the trader who pursues or directs it.

The Rapid, 8 Cranch, 155, [162.]

18. Under the instructions of the President, a privateer may lawfully capture a vessel, liable to capture, within the territorial limits of the United States, and bound to a port of the United States.

The Joseph, 8 Cranch, 451.

19. In cases of recapture the rule of reciprocity is applied. If France would restore in a like case, then we are bound to restore; if otherwise, then the whole property must be condemned to the recaptors. It appears that by the law of France in cases of recapture, after the property has been twenty-four hours in possession of the enemy, the whole property is adjudged good prize to the recaptors, whether it belonged to her subjects, to her allies,

or to neutrals. We are bound, therefore, in this case to apply the same rule; and as the property in this case was recaptured after it had been in possession of the enemy more than twenty-four hours, it must, so far as it belonged to persons domiciled in France, be condemned to the captors.

Schooner Adeline, 9 Cranch, 244, [288.]

20. If a capture be made by a privateer, which had been illegally equipped in a neutral country, the prize-courts of such neutral country have power, and it is their duty to restore the captured property, if brought within their jurisdiction, to its owner.

Brig Alerta vs. Moran, 9 Cranch, 359, [364.]

21. A shipment was made by Messrs. Burnett & Co., of London, to Messrs. Ivens & Burnett, of St. Michael's, and the invoices declare the goods to be by order, and for account and risk of the latter. It is contended, on behalf of the captors, that both houses are composed of the same persons, namely, William S. Burnett, who is domiciled at London, and William Ivens, who is domiciled at St. Michael's; and that the documentary evidence and private correspondence show that the shipment was made on account of the hostile house. If the fact of the identity of the two houses were material to the decision of the cause, it might furnish a proper ground for an order for further proof. But admitting the fact to be as the captors contend, we are satisfied that it can be of no avail to them. It is clear, from the whole documentary evidence, that this shipment was not made on the account and risk of the hostile house, but *bona fide* on the account and risk of the neutral house. It does not, therefore, present a case for the application of the principle that the property of a house of trade in the enemy's country is condemnable as prize, notwithstanding the neutral domicile of one of its partners. On the contrary, it presents a case for the application of the ordinary principle which subjects to confiscation, *jure belli*, the share of a partner in a neutral house where his own domicile is in a hostile country.

The Antonia Johanna, 1 Wheaton, 159.

22. The capture of a neutral ship having enemy's property on board is a strictly justifiable exercise of the rights of war. It is no wrong done to the neutral, even though the voyage be thereby defeated. The captors are not therefore answerable *in pœnam* to the neutral for the losses which he may sustain by a lawful exercise of belligerent rights. It is the misfortune of the neutral and not the fault of the belligerent.

Id.

23. By the capture the captors are substituted in lieu of the original owners, and they take the property *cum onere*. They are therefore

responsible for the freight which then attached upon the property, of which the sentence of condemnation ascertains them to be the rightful owners, succeeding to the former proprietors. So far the rule seems perfectly equitable; but to press it further, and charge them with the freight of goods which they have never received, or with the burden of a charter-party into which they have never entered, would be unreasonable in itself and inconsistent with the admitted principles of prize-law. It might, in case of a justifiable capture, by the condemnation of a single bale of goods, lead the captors to their ruin with the stipulated freight of a whole cargo.

Id.

24. If a neutral ship, laden in part with neutral and in part with enemy's property, be captured, the whole freight is not a charge on the property condemned; that pays only its own freight.

Id.

25. In general the rules of the prize-court as to the vesting of property are the same with those of the common law, by which the thing sold, after the completion of the contract, is properly at the risk of the purchaser. But the question still recurs, when is the contract executed? It is certainly competent for an agent abroad, who purchases in pursuance of orders, to vest the property in his principal immediately on the purchase. This is the case when he purchases exclusively on the credit of his principal or makes an absolute appropriation and designation of the property for his principal. But where a merchant abroad, in pursuance of orders, either sells his own goods or purchases goods on his own credit, (and thereby, in reality, becomes the owner,) no property in the goods vests in his correspondent until he has done some notorious act to divest himself of his title or has parted with the possession by an actual and unconditional delivery for the use of such correspondent.

The St. José Indiano, 1 Wheaton, 208.

26. The United States not having acknowledged the existence of a Mexican republic or state at war with Spain, the Supreme Court does not recognize the existence of any lawful court of prize at Galveston.

The Nueva Anna and Liebre, 6 Wheaton, 193.

27. A capture of Spanish property, in violation of our neutrality, by a vessel built, armed, equipped, and owned in the United States, is illegal, and the property, if brought within our territorial limits, will be restored to the original owner.

La Concepcion, 6 Wheaton, 235.

28. It is firmly settled that if captures are made by vessels which have violated our neutrality acts, the property may be restored, if brought within our territory.

The Gran Para, 7 Wheaton, 471.

29. A vessel armed and manned in one of our ports, and sailing thence to a belligerent port, with the intent thence to depart on a cruise with the crew and armament obtained here, and so departing and capturing belligerent property, violates our neutrality laws, and her prizes coming within our jurisdiction will be restored.

Ib.

30. A *bona-fide* termination of the cruise for which the illegal armament was here obtained, puts an end to the disability growing out of the violation of our neutrality laws, which does not attach indefinitely, but a colorable termination has no such effect.

Ib.

31. Whoever sets up a title under a condemnation is bound to show that the court had jurisdiction of the cause; and that the sentence has been rightly pronounced upon the application of parties competent to ask it. For this purpose, it is necessary to show who are the captors, and how the court has acquired authority to decide the cause.

The Nereyda, 8 Wheaton, 108, [168.]

32. In the ordinary cases of belligerent capture, no difficulty arises on this subject, for the courts of the captors have general jurisdiction of prize, and their adjudication is conclusive upon the proprietary interest. But where, as in the present case, the capture is made by captors acting under the commission of a foreign country, such capture gives them a right which no other nation, neutral to them, has authority to impugn, unless for the purpose of vindicating its own violated neutrality. The courts of another nation, whether an ally or a co-belligerent only, can acquire no general right to entertain cognizance of the cause, unless by the consent or upon the voluntary submission of the captors.

Ib.

33. As to right to impugn capture, where the capturing vessel is equipped in our waters, in violation of neutrality, see

The Fanny, 9 Wheaton, 668.

34. Neither the President nor any military officer can establish a court in a conquered country and authorize it to decide upon the rights of the United States or of individuals in prize causes, or to administer the law of nations.

Jecker vs. Montgomery, 13 Howard, 498.

35. Though it is the duty of the captor, under the law of nations, affirmed by the act of Congress, (R. S., § 4615,) to send in captured property for adjudication by a court of his own country having competent jurisdiction, yet he may be excused by imperative circumstances for making a sale of such property and afterward seasonably subjecting the proceeds to the jurisdiction of a proper court of prize.

Ib.

36. The property of a commercial house, established in the enemy's country, is subject to seizure and condemnation as prize, though some of the partners may have a neutral domicile.

The Cheshire, 3 Wallace, 231.

37. A voyage from a neutral port to a belligerent port is one and the same voyage, whether the destination be ulterior or direct, and whether with or without the interposition of one or more intermediate ports; and whether to be performed by one vessel, or by several employed in the same transaction and in the accomplishment of the same purpose.

The Bermuda, 3 Wallace, 514.

38. Destination alone justifies seizure and condemnation of ship and cargo in voyage to ports under blockade; and such destination justifies equally seizure of contraband in voyage to ports not under blockade; but in the last case, ship and cargo not contraband are free from seizure, except in case of fraud or bad faith.

Id.

39. Mere sailing for a blockaded port is not an offense; but where the vessel has a knowledge of the blockade, and sails for the blockaded port with the intention of violating it, she is clearly liable to capture.

The Admiral, 3 Wallace, 604.

40. Domicile in the law of prize becomes an important consideration, because every person is to be considered in such proceedings as belonging to that country where he has his domicile, whatever may be his native or adopted country. (See *Domicile*.)

The William Bagaley, 5 Wallace, 377, [408.]

41. If a ship or cargo is enemy property, or if either be otherwise liable to condemnation, the circumstance that the vessel at the time of the capture was in neutral waters would not, by itself, avail the claimants in a prize-court. It might constitute a ground of claim by the neutral power, whose territories had suffered trespass, for apology or indemnity. But neither an enemy nor a neutral acting the part of an enemy can demand restitution of captured property on the sole ground of capture in neutral waters.

The Sir William Peel, 5 Wallace, 517.

The Adela, 6 Wallace, 266.

42. A *bona-fide* purchase for a commercial purpose by a neutral, in his own home port, of a ship of war of a belligerent that had fled to such port in order to escape from enemy vessels in pursuit, but which was *bona fide* dismantled prior to the sale, and afterward fitted up for the merchant service, does not pass a title above the right of capture by the other belligerent.

The Georgia, 7 Wallace, 32.

43. A Spanish-owned vessel on her way from New York to Havana, being in distress, put, by leave of the admiral commanding the squadron, into Port Royal, S. C., then in rebellion, and blockaded by a Government fleet, and was there seized as a prize of war and used by the Government. She was afterward condemned as prize, but ordered to be restored. She never was restored, damages for her seizure, detention, and value being awarded : Held that clearly she was not prize of war, or subject of capture ; and that her owners were entitled to fair indemnity, although it might be well doubted whether the case was not more properly a subject for diplomatic adjustment than for determination by the courts.

The Nuestra Señora de Regla, 17 Wallace, 30.

44. A special order of the sovereign, though contrary to the law of nations, justifies the captors in all tribunals of prize. It is quite another question whether a neutral tribunal of prize would lend its aid to enforce such captures, though, perhaps, in the strictness of national law it would be bound to abstain from all obstruction of the captors.

Maisonnaire vs. Keating, 2 Gallison, 325 [335.]

45. Persistent misrepresentation by the claimant of the character and destination of the voyage of the captured vessel is sufficient cause for condemnation of the vessel and cargo.

The Revere, 2 Sprague, 107.

46. Prize-courts are subject to the instructions of their own sovereign. In the absence of such instructions their jurisdiction and rules of decision are to be ascertained by reference to the known powers of such tribunals, and the principles by which they are governed under the public law and the practice of nations.

The Amy Warwick, 2 Sprague, 123.

47. The proceedings of a prize-court of the so-called Confederate States are of no validity here, and a condemnation and sale by such a court do not convey any title to the purchaser, or confer upon him any right to give a title to others.

The Lilla, 2 Sprague, 177.

48. A consul, particularly in an enemy's country, has no authority by virtue of his office to grant a license or permit which will have the effect of exempting a vessel of the enemy from capture and confiscation.

Rogers vs. The Amado, 1 Newberry, Adm., 400.

CENTENNIAL EXHIBITION.

1. The President has the power to fill vacancies in the Centennial Commission created by act of 3d March, 1871, (16 Stat., 470,) happening after 3d March, 1872, upon nomination by the governors of the States and Territories respectively.

Vacancies of Commissioners, 14 Op., 48, Bristow, acting, (1872.)

CENTRAL AMERICA.

1. There is nothing in the convention between the United States and Great Britain of 19th April, 1850, (Pub. Trs., 322,) which forbids either of the contracting parties to intervene, if either of them sees fit, by alliances, influence, or even by arms, in the affairs of Central America.

The Clayton-Bulwer treaty, 8 Op., 436, Cushing, (1853.)

CERTIFYING INVOICES.

See Consular Officers.

CERTIFYING OFFICERS.

1. Heads of Departments or officers of the Government entitled to certify, cannot certify by delegation, unless specially authorized so to do by act of Congress.

Certification by delegation, 7 Op., 594, Cushing, (1855.)

CHARGÉ D'AFFAIRES.

See Compensation.

Diplomatic Officers.

Privilege from arrest.

CITIZENS.

1. Obligations of the Government toward its citizens domiciled in foreign countries, who apparently have no intention to return, and who do not contribute to its support, considered; and likewise what should be regarded as evidence of the absence of an intent to return in such cases.

Amther's case, 9 Op., 62, Black, (1857.)

CITIZENSHIP.

See *Expatriation.*

Pardon.

Passports.

1. Under the second article of the treaty of 1794 with Great Britain, (Pub. Trs., 269,) a British subject may have elected to become a citizen of the United States, by remaining therein, without having declared his intention to continue to be a British subject, but did not become *ipso facto* a citizen of the United States. He could do so only by becoming naturalized in accordance with section 2 of the act of January 29, 1795. (1 Stat., 414.)

Porlier's case, 5 Op., 716, *Wirt*, *Appendix*, (1819.)

2. In regard to the protection of our citizens in their rights at home and abroad, we have in the United States no law which divides them into classes, or makes any difference whatever between them.

Christian Ernst's case, 9 Op., 356, *Black*, (1859.)

3. The theory that a naturalized citizen is liable to be divested of his acquired citizenship and allegiance if found within the power of his native sovereign, though he may claim the protection of his adopted country everywhere except in the country of his birth, is without any foundation, except the dogma which denies the right of expatriation without the consent of one's native country.

Ib.

4. A naturalized citizen who returns to his native country is liable, like any other person, to be arrested for a debt or a crime, but he cannot rightfully be punished for the non-performance of a duty which is supposed to grow out of his abjured allegiance. An arrest of a former subject, who has become naturalized in the United States, cannot be justified on the ground that he emigrated contrary to the laws of his original country.

Ib.

5. A free white person born in this country, of foreign parents, is a citizen of the United States.

Citizenship, 9 Op., 373, *Black*, (1859.)

6. A person disfranchised as a citizen by conviction for crime under the laws of the United States can be restored to his rights as such by a free and full pardon from the President, and such pardon may be granted, after he has suffered the other penalties incident to his conviction, as well as before.

Effect of pardon, 9 Op., 478, *Black*, (1860.)

7. A woman born in this country, of American parents, married a Spanish subject residing here, but who was never naturalized, and with

her husband and his child, of three years of age, also born in this country, removed to Spain, where she lived till her husband's death: Held, that the removal of the lady and her daughter to Spain, and their residence there, under the circumstances, were not evidence of an attempt on their part to expatriate themselves, and that they were still American citizens.

Case of Mrs. Preto and daughter, 10 Op., 321, Bates, (1862.)

8. A child born in the United States, of alien parents who have never been naturalized, is, by the fact of birth, a native-born citizen of the United States, and entitled to all the rights and privileges of citizenship.

Children born of aliens, 10 Op., 328, Bates, (1862.)

9. Children born abroad of aliens, who subsequently emigrated to this country with their families, and were naturalized here during the minority of their children, are citizens of the United States.

Children of aliens, 10 Op., 329, Bates, (1862.)

10. Children born here of alien subjects, who have declared their intention of becoming citizens, are citizens of the United States under the act of 14 April, 1802. (2 Stat., 155; R. S. § 2172.)

Ib.

11. Madame B. was born in France. Her father, at the time of her birth, was a citizen of the United States. She married in France a French citizen, and continued, after the death of her husband, to reside in the country of her nativity: Held, that she is a citizen of France and not of the United States.

Case of Madame Berthemy, 12 Op., 7, Stanbery, (1866.)

12. A question as to status or citizenship, arising in the United States, is determinable by our own law, or, if it arose on the high seas, or anywhere out of the jurisdiction or operation of British law, it would be a question either under our own law or the public law, according to the circumstances under which the right was asserted or demanded.

Warren's case, 12 Op., 319, Stanbery, (1867.)

13. A person born in Ireland, but naturalized in the United States, is not entitled, when arraigned in a British court for treason-felony, to a jury *de medietate*.

Ib.

14. Children born abroad whose fathers were, at the time of their birth, citizens of the United States, and had at some time resided therein, are American citizens, under the provisions of the act of 1855, (10 Stat., 604; R. S., § 1993,) and are entitled to all the privileges of citizenship which it is in the power of the United States Government to confer.

Case of five residents in Curaçoa, 13 Op., 89, Hoar, (1869.)

15. But if, by the laws of the country of their birth, such children are subjects of its government, it is not competent to the United States, by legislation, to interfere with that relation while they continue within the territory of that country, or to change the relation to other foreign nations which, by reason of their place of birth, may at any time exist. Passports may be refused under such circumstances.

Id.

16. A woman born in the United States, but married to a citizen of France and domiciled there, is not "a citizen of the United States residing abroad," within the meaning of those words in section 116 of the act of 1864, (13 Stat., 281, repealed,) and section 13 of the amendatory act of 1867, (14 Stat., 477, repealed.)

Case of Madame Berthemy, 13 Op., 128, *Hoar*, (1869.)

17. All persons who were citizens of Texas at the date of annexation, viz, December 29, 1845, became citizens of the United States by virtue of the collective naturalization effected by the act of that date. Citizens of Texas thus adopted into the citizenship of the United States classified and described.

Citizens of Texas, 13 Op., 397, *Akerman*, (1871.)

18. Children born abroad of persons once citizens of the United States, but who have become citizens or subjects of a foreign power, are not citizens of the United States, nor, as such, entitled to its protection.

Reply to President's questions, 14 Op., 295, *Williams*, (1873.)

19. A native-born citizen of the United States who has been naturalized in a foreign country, and thus become a citizen or subject thereof, is to be regarded as an alien; and he cannot re-acquire American nationality, except in conformity to the laws of the United States providing for the admission of aliens to citizenship therein.

Id.

20. The authorities upon the construction of section 2 of act of 1855 (10 Stat., 604; R. S., § 1994) reviewed, and the following conclusion deduced therefrom, viz: That any free white woman, not an alien enemy, who is married to a citizen of the United States, is, by reason of her marriage, to be deemed a citizen of the United States, irrespective of the time or place of the marriage or the residence of the parties.

Effect of marriage, 14 Op., 402, *Williams*, (1874.)

21. Held, accordingly, that an alien woman who has intermarried with a citizen of the United States residing abroad, the marriage having been solemnized abroad, and the parties after the marriage continuing to reside abroad, is to be regarded as a citizen of the United States, within the meaning of said act, though she may never have resided in the United States.

Id.

22. A Prussian subject by birth emigrated to the United States in 1848, became naturalized in 1854, and in the following year had a son born in Saint Louis, Missouri. Four years after the birth of his son he returned to Germany with his family, including this infant child, and became domiciled at Wiesbaden, in Nassau, where he has continuously resided. In 1866 Nassau became incorporated into the North-German Confederation. When the son reached the age of twenty years he was called upon by the German government to report for military duty. Thereupon the intervention of the legation of the United States was invoked, on the ground that the son was a native American citizen.

Article 4 of the naturalization treaty of 1868 between Germany and the United States (Pub. Trs., 576) provides that "if a German, naturalized in America, renews his residence in North Germany without the intent to return to America, he shall be held to have renounced his naturalization in the United States. * * * The intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country."

Under this treaty, and according to the American rule declared in section 1999 of the Revised Statutes, the father renounced his naturalization in America and became a German subject. By virtue of the German laws, his son, being a minor, also acquired German nationality. Having, at the same time, an American nationality by birth, he thus had a double nationality.

Steinkauler's case—Op., Pierrepont, (June 26, 1875.)

23. The son, being domiciled with his father, and being, as a minor, subject to him, according to both German and American law, and receiving German protection, and declining to give any assurance of intention to return to and reside in the United States, cannot invoke the aid of the Government of the United States.

Ib.

24. But when he reaches the age of twenty-one years, he may elect whether he will return to and take the nationality of his birth, with its duties and privileges, or retain the nationality acquired by the act of his father. No act of his father can have the effect to deprive him of his nationality by birth.

Ib.

25. Under the act of 1802, (2 Stat., 153; R. S., § 2172,) a minor child of a father duly naturalized became a citizen, though not then within the United States, provided she was a resident therein at the time of the passage of this law.

Campbell vs. Gordon, 6 Cranch, 176, [183.]

26. A woman, residing with her father, a citizen of South Carolina, when that city was captured by the British forces in May, 1780, continued so to reside until 1781, when she was married to a British officer, with whom she went to England in 1782, and there remained until her death, in 1801; she left five children born in England. Held, *first*. That the capture of Charleston did not permanently change the allegiance or the national character of the inhabitants. *Second*. That by her marriage with an alien she did not cease to be a citizen of South Carolina. *Third*. That her withdrawal with her husband, and her permanent adherence to the side of the enemies of the state, down to and at the time of the treaty of peace of 1783, operated as a virtual dissolution of her allegiance, and that her coverture did not disable her from making this election.

Shanks vs. Dupont, 3 Peters, 242.

27. An American citizen may enter either the land or naval service of a foreign government without divesting himself thereby of his rights of citizenship.

The Santissima Trinidad, 1 Brockenbrough, 478.

28. A person born abroad, on board of an American vessel, of parents who are citizens of the United States, and who are, at the time, in the foreign country, not with the design of removing thither, but only having touched there in the course of a voyage which the father has made, as captain of the vessel, is to be regarded as a citizen of the United States.

United States vs. Gordon, 5 Blatchford, 18.

29. By article 3 of the convention with Great Britain of 1818, (Pub. Trs., 297,) it was agreed that the Oregon territory should "be free and open to the vessels, citizens, and subjects of the two powers;" which convention was continued in force until the convention of 1846. (Pub. Trs., 320.) Held, in reference to a question of nationality, that, during the period of such joint occupation, the country, as to British subjects therein, was British soil, and subject to the jurisdiction of the King of Great Britain; but, as to citizens of the United States, it was American soil, and subject to the jurisdiction of the United States.

McKay vs. Campbell, 2 Sawyer, 119.

30. Held, also, that a child born in such territory in 1823, of British subjects, was born in the allegiance of the King of Great Britain, and not in that of the United States.

Id.

CIVIL WAR.

See *Belligerents*.
Capture and Prize.
Contraband.
Neutrality.
War.

1. The conquest of a country, or portion of a country, by a public enemy, entitles such enemy to the sovereignty, and gives him civil dominion as long as he retains his military possession. Inhabitants, and strangers who go there, during the occupation of the enemy, must take the law from him as the ruler *de facto*, and not from the government *de jure* which has been expelled.

The Georgiana and Lizzie Thompson, 9 Op., 140, Black, (1858.)

2. A revolutionary party, like a foreign belligerent power, is supreme over the country it conquers, as far and as long as its arms can carry and maintain it; and when the former government resumes its possession of the territory it cannot call the citizens or subjects of a third nation to account for obeying the authority which was temporarily supreme.

Id.

3. Although it has been doubted whether a mere body of rebellious men can claim all the rights of a separate power on the high seas, without absolute or qualified recognition from foreign governments, there is no authority for a doubt that the parties to a civil war have the right to conduct it with all the incidents of lawful war within the territory to which they both belong.

Id.

4. When, during the existence of a civil war in Peru, American vessels found a port of that country and points on its coast where guano is deposited, in the possession of one of the parties to the contest, and procured under its authority and jurisdiction clearances and licenses at the custom-house to load with guano, they were guilty of nothing (having acted fairly in pursuance of the license) for which the other party to the civil war could lawfully punish or molest them afterward.

Id.

5. It is not intended to say that belligerent rights may not be superadded to those of sovereignty. But admitting a sovereign, who is endeavoring to reduce his revolted subjects to obedience, to possess both sovereign and belligerent rights, and to be capable of acting in either character, the manner in which he acts must determine the character of the act; *i. e.*, whether it is an exercise of belligerent rights or exclusively of his sovereign power.

Rose vs. Himely, 4 Cranch, 241, [272.]

6. When a civil war rages in a foreign nation, one part of which separates itself from the old established government and erects itself into a distinct government, the courts of this country must view such newly-constituted government as it is viewed by the legislative and executive departments of the Government of the United States.

United States vs. Palmer, 3 Wheaton, 610.

7. If the government remains neutral, but recognizes the existence of a civil war, the courts of the country cannot consider as criminal those acts of hostility which war authorizes and which the new government may direct against its enemy.

Ib.

8. The same testimony which would be sufficient to prove that a vessel or person is in the service of an acknowledged state, is admissible to prove that they are in the service of such newly-erected government. Its seal cannot be allowed to prove itself, but may be proved by such testimony as the nature of the case admits; and the fact that a vessel or person is in the service of such government may be established otherwise, should it be impracticable to prove the seal.

Ib.

9. The Government of the United States having recognized the existence of a civil war between Spain and her colonies, our courts are bound to recognize as lawful those acts which war authorizes and the new governments in South America may direct. Captures made under their commissions must be treated by us like other captures.

The Divina Pastora, 4 Wheaton, 52.

10. The seal to a commission issued by a new government not acknowledged by the Government of the United States cannot be permitted to prove itself; but the fact that the vessel cruising under such commission is employed by such government may be established by other evidence, without proving the seal.

The Estrella, 4 Wheaton, 298.

11. A capture of a Spanish vessel and cargo, made by a privateer commissioned by the province of Carthagená while it had an organized government and was at war with Spain, cannot be interfered with by the courts of the United States.

The Nuestra Señora de la Caridad, 4 Wheaton, 497.

12. The Government of the United States not having acknowledged the existence of any Mexican republic or state at war with Spain, the Supreme Court could not consider as legal any acts done under the flag and commission of such republic or state.

The Nueva Anna and Liebre, 6 Wheaton, 193.

13. Though the independence of Buenos Ayres has not been acknowledged by the United States, we have recognized the existence of a state of civil war between Spain and its colonies, and each party to that war is respected by us in its exercise of all belligerent rights, including the right of capture.

The Santissima Trinidad, 7 Wheaton, 283, [337.]

14. To create the right of blockade and other belligerent rights, as against neutrals, it is not necessary that the party claiming them should be at war with a separate and independent power; the parties to a civil war are in the same predicament as two nations who engage in a contest and have recourse to arms.

Prize Cases, 2 Black, 635.

15. A state of actual war may exist without any formal declaration of it by either party; and this is true of both a civil and a foreign war.

Ib.

16. A civil war exists, and may be prosecuted on the same footing as if those opposing the Government were foreign invaders, whenever the regular course of justice is interrupted by revolt, rebellion, or insurrection, so that the courts cannot be kept open.

Ib.

CLAIMS.

1. Under the provisions of the convention with France of 1803, (Pub. Trs., 236,) the United States are in no event and on no principles bound to protect demands for freight where individuals have transported articles for the French government, or for its citizens, since they are within no provision of the convention.

Claims under treaty with France, 1 Op., 136, Lincoln, (1803.)

2. An invasion of a custom-house in Texas by citizens of Arkansas, and the violent abstraction therefrom of property, under a claim of title, constitute no ground of claim against the United States.

Claims of Texas for invasion, 4 Op., 332, Nelson, (1844.)

3. This Government is not responsible for the acts of private trespassers; they must be punished in the tribunals established by law, or be prosecuted for the recovery or value of the goods, either in the State or Federal courts.

Ib.

4. Although it may have been a rule of an Executive Department to construe an act of Congress relating to claims in a particular manner, yet, when Congress has afterward expressed an opinion in conflict with that of the Department, such action of Congress

has been considered as in the nature of a legislative interpretation, which becoming courtesy to the legislative department requires the executive to observe.

Claim of representative of John M. Galt, 5 Op., 83, [84,] Johnson, (1849.)

5. The decision of the head of a Department, directing payment of a particular claim, is binding upon all the subordinate officers by whom the same is to be audited and passed.

H. Lasell's case, 5 Op., 87, Johnson, (1849.)

6. This doctrine has been recognized from the organization of the Government, is necessary to its proper operations, and is warranted by law.

Ib.

7. In general, the Government, which is always to be presumed to be ready and willing to discharge its obligations, pays no interest; yet, from considerations of State policy, it has sometimes, as in the case of claims under the act of 1814, (6 Stat., 139,) allowed it.

Claim of Henry de la Francia, 5 Op., 105, Johnson, (1849.)

8. Henry de la Francia, original claimant, being dead at the passage of the supplementary act of 1848, (9 Stat., 736,) authorizing the Secretary of State to settle his claim for advances, &c., and as the claim was assets belonging to his estate, the avails of which were to be accounted for as such, the amount awarded should be paid only to an administrator duly appointed and authorized to receipt for the estate.

Claim of Henry de la Francia, 5 Op., 135, Johnson, (1849.)

9. But, as it appears that a competent court has decided Joseph de la Francia to be the sole distributee entitled to the amount from the administrators, the Secretary is advised to take a receipt from him or his attorney also.

Ib.

10. Under a power of attorney executed by Joseph de la Francia to James Bowie, the latter had authority to substitute Isaac Thomas in his stead; but Thomas could not legally substitute William Cost Johnson in his stead.

Ib., 137.

11. The receipt and acquittance in blank, purporting to have been signed by said Thomas, if authentic, gives authority so to fill it up as to make it a full discharge and acquittance of all title to the sum awarded to said Joseph de la Francia by the Secretary of State.

Ib.

12. Although interest, as a general rule, will not be paid upon claims against the Government, there are instances in which the Government, from certain considerations of policy, allows it.

Claims of heirs of Thomas Ewel, 5 Op., 138, Johnson, (1849.)

13. Cases in which interest on claims should be allowed.

Claim of executor of George Galpin, 5 Op., 105, [227, 399,] Johnson, (1850.)

14. Where money is due from the Government to the heirs of one deceased, and there is a dispute as to the legal descent, the latter question should be decided by the court rather than by the executive officers.

Case of Torrence and others, 5 Op., 670, Crittenden, (1853.)

15. The Secretary of State may re-imburse certain officers of Topographical Engineers for personal expenses incurred in the execution of the sixth article of the treaty of 1842, (Pub. Trs., 319,) and in reconstructing the maps showing the boundaries under that treaty.

Claim of Colonel Graham et al., 5 Op., 671, Crittenden, (1853.)

16. The Secretary of State has no power to appoint a commission or board to determine how much money a foreign prince shall pay to counsel in the United States for professional services.

Seeley's case, 6 Op., 386, Cushing, (1854.)

17. The extraordinary expenses of a party, incurred in living at Saint Mary's, whither he retired after the destruction of his property in Florida, are too remotely consequential to be the proper subject of damages under article 9 of the treaty of 1819 between the United States and Spain. (Pub. Trs., 715.)

Case of a Spanish claimant, 6 Op., 530, Cushing, (1854.)

18. The United States is not responsible in damages for moneys illegally received by consuls, or for any act of malfeasance by them in office.

The bark Serene, 6 Op., 617, Cushing, (1854.)

19. Responsibility of Government for injuries by public officers discussed.

Neither the State of California nor the United States is responsible for loss to the owners of a Peruvian bark lost by the carelessness of one of the associated pilots appointed under the laws of California.

The bark Eliza and pilot, 7 Op., 229, [237, 238,] Cushing, (1855.)

20. As a general rule the United States does not pay interest on any debts of the Government. The only exceptions are where the Government stipulates to pay interest, as in public loans, and where interest is given by act of Congress expressly, either by the name of interest or by that of damages.

Colmesnil's case, 7 Op., 523, Cushing, (1855.)

21. Acts of Congress authorizing the settlement of claims according to "equity" or "equity and justice" do not give interest; for, as between private individuals, there is no material difference in this respect between equity and law, and that expression does not change the result as regards the Government.

22. Review of former opinions on the same subject.

Ib.

23. The Secretary of State must decide, according to his own discretion, whether he will press the claim of a citizen of the United States upon the attention of a foreign government.

Perkins claim, 9 Op., 338, Black, (1859.)

24. It is within the power of the head of an Executive Department to allow a claim which has been rejected by one of his predecessors, without new evidence. But the decisions of the head of a Department ought only to be reversed on clear evidence of mistake or wrong.

Claim of Belding's heirs, 10 Op., 56, Bates, (1861.)

25. The convention of 1864 with the United States of Colombia (Pub. Trs., 158) confers on the commission thereby created authority to decide the cases which had been presented within the time specified, and which had not been decided by the commission appointed under the convention of 1857, (Pub. Trs., 564,) and therefore conferred jurisdiction to determine what cases had been presented to, but not decided by, the old commission.

Convention with United States of Colombia, 11 Op., 402, Speed, (1865.)

26. The rule of international law is well established that a foreigner, who resides in the country of a belligerent, can claim no indemnity for losses of property occasioned by acts of war of the other belligerent.

Case of Wheelwright and others, 12 Op., 21, Stanbery, (1866.)

27. American merchants, domiciled for commercial purposes at Valparaiso, cannot sustain a claim for indemnity against Spain or Chili for losses of merchandise caused by the bombardment of Valparaiso by the Spanish fleet in March, 1866.

Ib.

28. Where the Postmaster-General is authorized and required by act of Congress to adjust a particular claim, nothing but a new authority, emanating from Congress, will enable one of his successors to open his adjustment upon the ground that he adopted an erroneous basis of settlement.

Chorpenning's case, 12 Op., 355, Stanbery, (1868.)

29. The fact that, since the settlement, the committees of the two houses recommended, by reports, a different basis of settlement, will not authorize a re-opening of the case.

Ib.

30. Where a claim was duly referred to the board of commissioners constituted under the convention with New Granada, of 1857, (Pub. Trs., 564,) and submitted to an umpire authorized by that convention, who reported his award during the existence of the board, and payment was suspended at the Treasury by re-

quest of the Secretary of State, and the case was afterward referred, without the claimant's consent, to the commission constituted under the convention of 1864 with the United States of Colombia, (Pub. Trs., 158,) as the representative of the late republic of New Granada: Held that by the submission of this claim to the commission, in the manner stated, the claimant was not divested of his rights against New Granada under the award of the umpire aforesaid.

Claim of R. W. Gibbes, 13 Op., 19, Hoar, (1869.)

31. The award not having been vacated, opened, or set aside during the life-time of the former commission, and the claimant having done nothing since to waive his rights thereunder, it should be treated by our Government as a valid and conclusive ascertainment of his claim against New Granada.

Id.

32. But under section 7 of the act of 1861, (12 Stat., 145,) the claimant, in order to receive payment at the Treasury of the amount awarded to him, is required to produce a certificate of the board of commissioners in his favor.

Id.

33. The rule that, before a citizen of a country is entitled to the aid of his government in obtaining redress for wrongs done him by another government, he must have sought redress in vain through the judicial tribunals of that other government, is inapplicable where the offending government, by the acts of its proper organ, relieves the injured party from the obligation of pursuing such course. The passenger-tax of \$2 per head, levied by the State of Panama, under authority from New Granada, upon all vessels embarking or disembarking passengers in that State, so far as it affected citizens of the United States crossing the isthmus, is in violation of the thirty-fifth article of the treaty of 1848. (Pub. Trs., 558.)

Panama transit tax, 13 Op., 547, Akerman, (1871.)

34. The Government of Brazil is not responsible for damage resulting to a citizen of the United States from the alleged corruption of a municipal judge in that country, in authenticating and ratifying the report of a board of surveyors upon a damaged vessel, though the charge were established.

Case of the judge at Saint Catherines, Brazil, 13 Op., 553, Akerman, (1871.)

35. Whenever the law makes it the duty of an officer to examine, adjust, and settle claims against the Government, authority is impliedly given to him to require such claims to be supported by the oaths of witnesses where the facts necessary to establish them rest on testimony.

Major Anderson's case, 14 Op., 419, Williams, (1874.)

36. The act of 1871 (16 Stat., 412; R. S., § 184) assumes the existence of authority in the heads of Departments and bureaus to require oaths in cases of claims against the Government, and provides them with a very efficient means of enforcing it.

Ib.

37. Under the treaty with Spain, of 1819, (Pub. Trs., 712,) the commissioners had power to decide conclusively upon the amount and validity of claims, but not upon the conflicting rights of parties to the sums awarded by them.

Comegys vs. Vasse, 1 *Peters*, 193.

38. The right to indemnity for an unjust capture passes to the underwriter by an abandonment.

Ib.

39. Under the act of Congress constituting a board of commissioners to pass on claims, provided for by the treaty with France, of 1831, (Pub. Trs., 245,) the decision of the board between conflicting claimants is not conclusive, and the question of their respective titles is fully open to be adjudicated by the courts.

Frevall vs. Bache, 14 *Peters*, 95.

40. The validity of assignments of claims, such as those presented before commissioners under treaty conventions, has been recognized by the various boards of commissioners and the courts of justice for many years.

Judson vs. Corcoran, 17 *Howard*, 614.

41. An act of Congress referring a claim against the Government to an officer of one of the Executive Departments to examine and adjust, does not, even though the claimant and Government act under the statute and the account is examined and adjusted, make the case one of arbitrament and award, in the technical sense of these words, so as to bind either party as by submission to award. Hence a subsequent act repealing the one making the reference (the claim not having been yet paid) impairs no right, and is valid.

Gordon vs. United States, 7 *Wallace*, 188.

42. Semble, that the court does not sanction the allowance of interest on claims against the Government.

Ib.

43. By the proceeding known as a "petition of right," the British government accords to citizens of the United States the right to prosecute claims against it.

Accordingly, British subjects, if otherwise entitled, may recover, by process in our Court of Claims, the proceeds of captured and abandoned property, a privilege granted only to the

citizens or subjects of such foreign governments as accord to our citizens the right to prosecute claims against such governments in their courts.

United States vs. O'Keefe, 11 *Wallace*, 178.

Carlisle vs. United States, 16 *Wallace*, 148.

44. A commission constituted in pursuance of treaty provisions to settle and adjust disputed claims is for that purpose a quasi court, and an agreement to present and prosecute a claim at a fixed compensation, or for a reasonable percentage of the amount recovered, is not illegal, immoral, or against public policy.

Wright vs. Tebbitts, 91 *U. S. R.*, *S. C.*, 252.

45. A citizen of one nation, wronged by the conduct of another nation, must seek redress through his own government. His sovereign must assume the responsibility of presenting his claim, or it need not be considered.

United States vs. Diekelman, 92 *U. S. R.*, *S. C.*, 520, [524.]

46. A resident alien who takes up a residence in a foreign place and is injured in his property from belligerent acts committed by a foreign nation, must be considered to abide the chances of the country in which he chooses to reside. His claim, if any, is a personal one against the government of the country.

Perrin's case, 4 *C. Cls.*, 543.

Affirmed on other grounds.

Perrin's case, 12 *Wallace*, 315.

47. Under the laws of Prussia the *fiscus* represents the state, and any subject may sue the *fiscus* on contract before a court having like jurisdiction in actions between individuals. Judgment may be taken in such suit and execution issue. No discrimination is made against foreigners, save that they are required to give security for costs. Held, that an alien, a native of Hanover, which country had been incorporated into Prussia, was entitled to sue in the Court of Claims within the provisions of the act of July 27, 1868, (15 Stat., 243,) which permitted the citizens or subjects of any government which accords to citizens of the United States the right to prosecute such claims in her courts, to recover the proceeds of captured or abandoned property.

Brown's case, 5 *C. Cls.*, 571.

48. The example of Prussia and other German states in subjecting the government to suits at the instance of private persons led to the establishment of the Court of Claims.

Ib.

49. The Belgian government, by its system of jurisprudence, holds the government amenable before the courts as an ordinary debtor, and accords to citizens of the United States the same right to prosecute claims against it in its courts as is accorded to individuals as between themselves. A subject of Belgium may, therefore, maintain a suit in the Court of Claims.

De Giv'e's case, 7 *C. Cls.*, 517.

50. Italy accords to citizens of the United States the right to maintain an action against that government in its courts. A subject of Italy may, therefore, maintain an action in the Court of Claims.

Fichera's case, 9 C. Cls., 254.

51. The laws and precedents in Spain permit actions to be commenced before its judicial tribunals against the state by aliens, as well as subjects; judgments so rendered are inserted in the budget, and so paid without legislative consideration; a subject of Spain may, therefore, maintain an action in the Court of Claims.

Molina's case, 6 C. Cls., 269.

52. A resident alien owes like obedience to the laws of the country in which he resides, whether municipal or military, as a citizen. Where one resident in New Orleans transmits money across the lines to an agent to buy cotton, no valid title is acquired.

Queyrouze's case, 7 C. Cls., 402.

53. By the laws of Switzerland a private citizen may maintain a suit against the state in the federal tribunal, if the object of litigation is of the value of 3,000 francs. This right, taken in connection with the provisions of the treaty of November 25, 1850, (Pub. Trs., 749,) securing to citizens of the United States liberty to prosecute and defend their rights before courts of justice as native citizens, permits a citizen of Switzerland to maintain an action before the Court of Claims.

Lobsiger's case, 5 C. Cls., 687.

54. In France a French subject may sue the government for real and personal property, and American citizens being accorded the same privilege, subject to the giving of security, French subjects may sue in the Court of Claims.

Rothschild's case, 6 C. Cls., 204.

To same effect.

Dauphin's case, 6 C. Cls., 221.

CLERKS.

1. The duties of the clerks in an Executive Department are assigned to them by the head of the Department, except where they are specifically designated in particular cases by statute; and no posterior claim to extra compensation can be founded on the official acts done by a clerk, provided those acts constituted any part of the lawful duties of the Department.

Stubbs's case, 6 Op., 583, *Cushing*, (1854.)

2. Clerks in the Executive Departments are officers of the United States, and required to take the oath prescribed by the act of 1862, (12 Stat., 502; R. S., § 1756.)

Oaths of Clerks in Departments, 12 Op., 521, *Evarts*, (1868.)

COLONIES.*See Civil War.***COMMANDING GENERAL.**

1. The Constitution does not prohibit the creation, by military authority, of courts for the trial of civil causes during the civil war in conquered portions of the insurgent States. The establishment of such courts was the exercise of the ordinary rights of conquest.

A court established by proclamation of the commanding general in New Orleans, on the 1st of May, 1862, on the occupation of the city by the Government forces, will, in the absence of proof to the contrary, be presumed to have been authorized by the President.

Mechanics and Traders' Bank vs. Union Bank, 22 Wallace, 276.

2. Whether certain articles are contraband depends upon circumstances, and their character may be determined by the commanding general.

United States vs. Diekelman, 92 U. S. R., S. C. 520, [527.]

3. Every court of the United States must derive its jurisdiction and judicial authority from the Constitution or the laws of the United States; and neither the President nor any military officer can establish a court in a conquered country and authorize it to decide upon the rights of the United States or of individuals in prize cases, nor to administer the law of nations.

Jecker vs. Montgomery, 13 Howard, 515.

4. The courts established or sanctioned in Mexico during the war, by the commanders of the American forces, were nothing more than the agents of the military power, to assist it in preserving order in the conquered territory, and to protect the inhabitants in their persons and property while it was occupied by the American arms. They were subject to the military power, and their decisions under its control, whenever the commanding officer thought proper to interfere. They were not courts of the United States, and had no right to adjudicate upon a question of prize or no prize; and the sentence of condemnation in the court at Monterey is a nullity, and can have no effect upon the rights of any party.

Id.

5. It is unusual for military commanders to exercise the right to erect courts; and nothing will be presumed in favor of tribunals so established.

Snell vs. Faussett, 1 Washington, 271.

COMMISSIONERS.*See Diplomatic Officers.**International Commissioners.**Public Ministers.***COMPENSATION.**

1. Extra compensation cannot be allowed an officer whose salary is fixed by law for the discharge of a public service, but traveling expenses may be allowed.

Thompson's claim, 4 Op., 372 Mason, (1845.)

2. The rule applied to a bearer of dispatches.

Id.

3. It is the duty of the Government to provide a way to make the salary and expenses of a minister abroad good to him at the capital of his residence.

Case of Mr. Wise, minister at Rio, 4 Op., 506, Mason, (1846.)

4. If a minister be directed to draw on London for his salary and expenses, and there shall be a loss on the sale of his bills, it is the duty of the Government to make such loss good to him.

Id.

5. An acting Secretary of an Executive Department is not entitled to the salary provided for the incumbent whilst the office is filled and the salary is received by an incumbent duly appointed and confirmed.

Case of an Acting Secretary of State, 5 Op., 74, Toucey, (1849.)

6. If the duties of an office belong to an incumbent who receives the salary affixed to it, another officer performing those duties is prohibited from receiving therefor any compensation whatever without a new, distinct, specific appropriation for the purpose.

Id.

7. Since the act of 1842, (5 Stat., 525; R. S., § 1764,) no officer whose pay is fixed by law or regulation is entitled to any additional pay, extra allowance, or compensation, in any form whatever, for any other duty or service, unless the same shall be authorized by law, and the appropriation therefor explicitly set forth that it is for additional pay or extra compensation.

Id.

8. The salary of the American commissioner, appointed under the treaty between the United States and Great Britain of 1853, (Pub. Trs., 329,) commenced on his taking the oath of office, and he is entitled to the cost of transportation to and from London.

Case of British and American commissioners, 6 Op., 65, Cushing, (1853.)

9. The duties of the clerks in an Executive Department are assigned to them by the head of the Department, except where they are specifically designated in particular cases by statute; and no posterior claim to extra compensation can be founded on official acts done by a clerk, provided those acts constituted any part of the lawful duties of the Department.

Stubbs's case, 6 Op., 583, Cushing, (1854.)

10. The diplomatic and consular act of 1855 (10 Stat., 619, repealed) simply regulated the compensation of ministers and consuls, and did not require that they should be re-appointed. Under that act consuls were entitled to pay during the time they remained at their post of duty.

Compensation of officers, 9 Op., 89, Black, (1857.)

11. Under the act of 1856, (11 Stat., 52; R. S., § 1740,) a consul was entitled to pay, not only for the time spent at the place of his official duty, but, in addition, for the time occupied in awaiting his instructions, in traveling to his post of duty, and in returning home at the close of his service.

Id.

12. Under these laws each consul is entitled to be paid for his services according to the law which was in force when those services were rendered, without reference to the date of his commission.

Id.

13. The provisions in sec. 8 of the act of 1856, (11 Stat., 55; R. S., § 1740,) forbidding the allowance of compensation for the time occupied in coming home by a consul who shall have resigned or been recalled for malfeasance in office, does not apply to the case of a consul who has resigned or been recalled without being guilty of any misconduct. The penalty of having to come home at his own expense is only to be inflicted upon the consul whose misbehavior has obliged the Government to recall him, or who resigns simply to escape a recall which he is conscious of deserving.

Id.

14. After a consideration of the various acts of Congress, held that thereunder no officer of the Government having a salary fixed by law or regulation, and none whose annual compensation exceeds the sum of \$2,500, can receive extra pay or additional compensation for any public service whatever, whether it be in the line of his duty or outside of it; and that no officer of the Government can receive the salary of more than one office. Watchmen and messengers are excepted from the foregoing rules.

Reply to letter of Secretary of Interior, 9 Op., 123, Black, (1857.)

15. The absence of a minister-resident from his post, with permission of the President, is not an offense for which his salary, during the time of the absence, is to be withheld from him. The act of 1856 (11 Stat., 55; R. S., § 1741) does not forbid an absence of less than ten days without permission, or of more than that time with leave of the President.
Seibel's case, 9 Op., 138, *Black*, (1858.)
16. A secretary of legation is lawfully authorized to act as chargé d'affaires *ad interim* whenever he assumes the duties of that office in a manner warranted by public law, diplomatic usage, and the general instructions of the Department of State. When legally authorized to act in that capacity, he is entitled, under the act of 1856, (11 Stat., 56; R. S., § 1685,) to receive the pay of chargé d'affaires.
Case of a chargé d'affaires, 9 Op., 425, *Black*, (1860.)
17. A consul whose salary exceeds \$2,500 is entitled to be paid and retain his fees as commissioner for taking depositions in an admiralty proceeding in a United States district court, as the taking of the depositions was not a part of the duty of the consul as consul.
Pickett's case, 9 Op., 496, *Black*, (1860.)
18. By a decision of the Supreme Court, (*Converse vs. the United States*, 21 Howard, 463,) a person holding two compatible offices or employments under the Government is not precluded from receiving the salaries of both by anything in the general laws prohibiting double compensation; but the prohibition in those laws extends to every case where the duties for which extra compensation is claimed are performed without a regular appointment authorized by law.
J. P. Brown's case, 9 Op., 507, *Black*, (1860.)
19. It is the appropriate duty of the disbursing clerk of the State Department to take charge of and disburse the indemnity fund paid under the convention of the United States with Great Britain, of 1853, (Pub. Trs., 328.) He is not entitled, therefore, to commissions on the fund for any services in keeping and disbursing the same.
Stubbs's case, 10 Op., 31, *Bates*, (1861.)
20. A compensation for extra services, where no certain allowance is fixed by law, cannot be paid by the head of a Department to an officer of the Government to whose office is attached a fixed compensation, (5 Stat., 525; R. S., §§ 1764, 1765.)
Ib.
21. Money due to an employé of the Government cannot be attached, by the process of a State court, in the hands of the disbursing-officer.
Clinton's case, 10 Op., 120, *Bates*, (1861.)

22. The salary of a person appointed marshal of the United States consular court at Shanghai begins from the time of his entering upon such duties as are preliminary to his departure for the field of his services, after taking the oath of office and giving the bond prescribed by law.

Hughston's case, 10 Op., 250, *Bates*, (1862.)

23. Opinions of Attorneys General and Supreme Court of the United States concerning extra compensation considered. No discretion is left to the head of a Department to allow any officer who has a fixed compensation any amount beyond his salary, unless the service is required by existing law, and the remuneration fixed by law.

Whiting's case, 10 Op., 435, *Bates*, (1863.)

24. The act of 1868 (15 Stat., 56) disallows the salary of a diplomatic or consular officer in all cases of absence where, in any one year, the officer shall already have enjoyed absence, with salary, equal in aggregate to sixty days of time. (See R. S., § 1742.)

Absence of diplomatic officer, 12 Op., 410, *Browning*, *ad int.*, (1868.)

25. The compensation of vice-consuls and vice-commercial agents does not stop during the absence of their principals.

Ib.

26. The fund appropriated by the act of 1871 (16 Stat., 495) for the expenses of the Spanish Claims Commission may be paid to the commissioners and advocate on the part of the United States, from time to time, at the discretion of the President.

Pay of commissioners and advocate of Spanish Commission,
13 Op., 415, *Akerman*, (1871.)

27. A person holding two compatible offices or employments under the Government is not precluded from receiving the salaries of both.

Browning's case, 12 Op., 459, *Evarts*, (1868.)

28. The act of 1850 (9 Stat., 542) precludes an officer who may perform, under an *ad interim* authority, the duties of another office in which a vacancy exists, from receiving the compensation or salary provided for both offices.

Ib.

29. In such a case the *ad-interim* officer is not invested with a new office, but he is merely required to perform new duties.

Ib.

30. An officer who temporarily performs the duties of a vacant office, under the provisions of the act of 1868, (15 Stat., 168; R. S., § 177,) cannot be allowed, for the period during which he discharges this service, any salary other than what is annexed to the office held by him which would involve an increase of compensation.

Salary of ad-interim officer, 13 Op., 7, *Hoar*, (1862.)

31. The provision in section 3 of the act of 1868, (15 Stat., 168; R. S., § 182,) which declares that "the officer so performing the duties of the office temporarily vacant shall not be entitled to extra compensation therefor," was designed to be general, and applies as well to those vacancies which are supplied by operation of the statute as to those which are filled by designation of the President.

Ib.

32. Where a diplomatic officer, of a class named in the act of 1874, (18 Stat., 77,) temporarily absents himself for a period of not exceeding ten days, the right to compensation during such period of absence is not affected by that act, and such officer may be allowed compensation for the period of his temporary absence.

Compensation during absence, 14 Op., 534, Williams, (1875.)

33. The United States have the right to apply moneys due to an officer for pay and emoluments to extinguish a debt due from him to the United States.

Gratiot vs. United States, 15 Peters, 336.

34. A compensation for extra services, where no certain compensation is fixed by law, cannot be allowed by the head of a Department to any officer of the Government who has by law a fixed or certain compensation for his services in the office he holds. Nor can it be allowed by a court or jury as a set-off in a suit brought by the United States against an officer for public money in his hands.

Converse vs. United States, 21 Howard, 463.

35. No allowance beyond his fixed compensation can be made except for the performance of certain duties required by law to be performed, for which the law grants a certain compensation to be paid, and which have no connection with the duties of the office he holds.

Ib.

36. An agreement by the head of a Department to pay a clerk in his Department for services rendered to the Government by labors abroad, he still holding his place and drawing his pay as a clerk in the Department, is void.

Stansbury vs. United States, 8 Wallace, 35.

37. Every public officer is required to perform all duties which are strictly official, although they may be required by laws passed after he comes into office, and may be cumulative upon his original duties, and although his compensation therefor be wholly inadequate.

Andrews vs. United States, 2 Story, 202.

38. Where an act of Congress fixes the compensation of an officer of the Government, such compensation can neither be enlarged nor diminished by any regulation or order of the President, or of a Department, unless the power to make the same is given by act of Congress.

Goldsborough vs. United States, Taney's Dec., 80.

39. Where the salary of a purser in the Navy was fixed by law : Held there was no power to increase the compensation by allowing amounts by way of commissions.

Id.

40. Where commissioners were appointed to run the Mexican boundary-line, held that the matter in which they were engaged related directly to foreign affairs, and that they had no right to defray their expenses by drafts drawn upon the Treasury.

Goodman's case, 1 C. Cls., 166.

41. A foreign minister is entitled to receive his salary at the actual market-equivalent value in the money of the United States ; in the absence of a commercial value, the payments must be deemed to have been made at the real or intrinsic value of the coin.

Clay's case, 8 C. Cls., 209.

CONGRESS.

See Resolutions of Congress

CONQUEST.

See Civil War.

Enemy Property.

Sovereignty.

1. An island conquered and occupied by the enemy is, for belligerent and commercial purposes, his soil. The produce of that soil is liable to condemnation while it belongs to the individual proprietor of the soil which produced it, although he is a neutral.

Thirty Hogsheads of Sugar vs. Boyle, 9 Cranch, 191.

2. By the conquest and military occupation of a portion of the territory of the United States by a public enemy, that portion is to be deemed a foreign country, so far as respects our revenue laws.

United States vs. Rice, 4 Wheaton, 246.

3. The usage of the world is, if a nation be not entirely subdued, to consider the holding of a conquered territory as a mere military occupation until its fate shall be determined at the treaty of peace. If it be ceded by the treaty, the acquisition is confirmed, and the ceded territory becomes a part of the nation to which it is annexed, either on the terms stipulated in the treaty of cession, or on such as its new master shall impose. On such a transfer of territory it has never been held that the relations of the inhabitants with each other undergo any change. Their relations with their former sovereign are dissolved, and new relations are

created between them and the government which has acquired their territory. The same act which transfers their country transfers the allegiance of those who remain in it; and the law, which may be denominated political, is necessarily changed, although that which regulates the intercourse and general conduct of individuals remains in force until altered by the newly-created power of the state.

American Insurance Co. vs. Canter, 1 Peters, 542.

4. The laws, whether in writing or evidenced by the usage and customs of the conquered or ceded country, continue in force until altered by the new sovereign.

Strother vs. Lucas, 12 Peters, 436.

5. The capture and occupation of Tampico by the arms of the United States during the war with Mexico, though sufficient to cause it to be regarded by other nations as part of our territory, did not make it a part of the United States under our Constitution and laws.

Fleming vs. Page, 9 Howard, 603.

6. California, or the port of San Francisco, had been conquered by the arms of the United States as early as 1846. Shortly afterward, the United States had military possession of all of Upper California. Early in 1847, the President, as constitutional commander-in-chief of the Army and Navy, authorized the military and naval commander of our forces in California to exercise the belligerent rights of a conqueror, and to form a civil government for the conquered country, and to impose duties on imports and tonnage as military contributions for the support of the government and of the army which had the conquest in possession. * * * No one can doubt that these orders of the President, and the action of our Army and Navy commander in conformity with them, were according to the law of arms and the right of conquest, or that they were operative until the ratification and exchange of a treaty of peace. Such would be the case upon general principles in respect to war and peace between nations. In this instance it is recognized by the treaty itself.

Cross vs. Harrison, 16 Howard, 190.

7. When New Mexico was conquered by the United States, it was only the allegiance of the people that was changed; their relation to each other and their rights of property remained undisturbed.

Leitensdorfer et al. vs. Webb, 20 Howard, 176.

8. On a conquest by one nation of another, and the subsequent surrender of the soil and change of sovereignty, those of the former in-

habitants who do not remain and become citizens of the victorious sovereign, but, on the contrary, adhere to their old allegiance and continue in the service of the vanquished sovereign, deprive themselves of protection or security to their property, except so far as it may be secured by treaty.

United States vs. Repentigny, 5 Wallace, 211.

9. Hence where, on such a conquest, a treaty provided that the former inhabitants who wished to adhere in allegiance to their vanquished sovereign might sell their property, provided they sold it to a certain class of persons and within a time named, the property, if not so sold, became abandoned to the conqueror.

Ib.

10. The conquering power has a right to displace the pre-existing authority and to assume, to such extent as it may deem proper, the exercise by itself of all powers and functions of government. It may appoint all the necessary officers and clothe them with designated powers, larger or smaller, according to its pleasure. It may prescribe the revenues to be paid, and apply them to its own use or otherwise. It may do anything necessary to strengthen itself and weaken the enemy. There is no limit to the powers that may be exerted in such cases, save those which are found in the laws and usages of war.

New Orleans vs. Steamship Company, 20 Wallace, 387, [394.]

11. The Constitution did not prohibit the creation by military authority of courts for the trial of civil causes during the civil war in conquered portions of the insurgent States. The establishment of such courts was the exercise of the ordinary rights of conquest.

Mechanics and Traders' Bank vs. Union Bank, 22 Wallace, 276.

12. A court established by proclamation of the commanding general in New Orleans on the 1st of May, 1862, on the occupation of the city by the Government forces, will, in the absence of proof to the contrary, be presumed to have been authorized by the President.

Ib.

13. By the conquest and occupation of Castine, that territory passed under the temporary allegiance and sovereignty of the enemy. The sovereignty of the United States over the territory was suspended during such occupation, so that the laws of the United States could not be rightfully enforced there, or be obligatory upon the inhabitants who remained and submitted to the conquerors.

United States vs. Hayward, 2 Gallison, 485, [501.]

14. But a territory conquered by an enemy is not to be considered as incorporated into the dominions of that enemy without a renunciation in a treaty of peace, or a long and permanent possession. Until such incorporation it is still entitled to the full benefit of the law of postliminy.

Ib.

CONSTITUTIONAL LAW.

See Tonnage-Tax.

1. In all cases of plain and obvious conflict between the provisions of the Constitution and the provisions of a statute, not only the judiciary, but every department of the Government, required to act upon the subject-matter, must determine what the law is, and obey the Constitution.

Claim of Belding's Heirs, 10 Op., 56, Bates, (1861.)

2. The Constitution did not prohibit the creation, by military authority, of courts for the trial of civil causes during the civil war in conquered portions of the insurgent States. The establishment of such courts was the exercise of the ordinary rights of conquest.

Mechanics and Traders' Bank vs. Union Bank, 22 Wallace, 276.

3. The case of the city of New York *vs. Miln* (11 Peters, 103) decided only that the requirement that the master of a vessel should furnish a catalogue of his passengers, on oath, was a police regulation, and not unconstitutional. The result of the Passenger cases (7 Howard, 283) was to decide that a tax demanded of the master or owner of the vessel for every passenger was a regulation of commerce, and unconstitutional.

Henderson vs. The Mayor of New York; Commissioners of Immigration vs. The North German Lloyds; 92 U. S. R., S. C., 259.

4. In whatever language a statute may be framed, its purpose and its constitutional validity must be determined by its natural, reasonable effect; and if the object of a statute is to compel the owners of vessels to pay a sum of money for every passenger brought by them from a foreign port and landed at the port of New York, it is as much a tax on passengers as if collected from them, or a tax on the vessel, or the owners.

Ib.

5. Held, therefore, that the law of the State of New York, which provided that the master or owner of a vessel should make a report similar to the one referred to in the case of *New York vs. Miln*, and that on this report the mayor was to indorse a demand on the master or owner that he give a bond for every passenger landed, which bond might be commuted by paying within twenty-four hours the sum of one dollar and a half for each passenger so landed, was a regulation of commerce, and unconstitutional.

Ib.

6. The court does not undertake to decide whether a State may, in the absence of legislation by Congress, pass a statute to defend itself against paupers or criminals, but is of opinion that to Congress rightly and properly belongs the power of legislation over the whole question.

Ib.

7. A statute of the State of California provided that the commissioner of immigration should satisfy himself whether any passenger from a foreign port, not a citizen of the United States, belonged to certain enumerated classes, among which were lunatics, idiots, and lewd or debauched women, and that no such person should be permitted to land until a bond be given against any expense to be incurred for relief or support. The master, owner, or consignee was allowed to commute by paying such sums as the commissioner might think proper to exact. Held, that if the States possess the right to pass statutes to protect themselves against criminals, paupers, or diseased foreigners who may land, in any view which can be taken of the act in question it is in conflict with the Constitution, and therefore void.

Chy Lung vs. Freeman, 92 U. S. R., S. C., 275.

[See also *Gibbons vs. Ogden*, 9 Wheaton, 190; *City of New York vs. Miln*, 11 Peters, 103; *The Passenger Cases*, 7 Howard, 283; *Gilman vs. Philadelphia*, 3 Wallace, 713.]

CONSULAR COURTS.

1. In the absence of any specific appropriation for the object, the expense of transferring prisoners, held by the authorities of the United States in China from Amoy to Hong-Kong for trial on a charge of piracy, is a lawful charge upon the judiciary fund, so called, being the fund appropriated for defraying "the expenses of prosecutions for offenses committed against the United States, and for the safe-keeping of prisoners."

Claim for transporting prisoners, 6 Op., 59, Cushing, (1853.)

2. Jurisdiction and manner of holding consular courts in China discussed and considered at length.

Judicial authority in China, 7 Op., 495, Cushing, (1855.)

3. The judicial authority of the United States commissioner to China is restricted to the five ports mentioned in the treaty with that nation. (Pub. Trs., 129.)

Authority of commissioners to China, 9 Op., 294, Black, (1859.)

4. Under the act of 1848, (9 Stat. 276, superseded by later acts, R. S., § 4125,) the United States consuls in Turkey have judicial powers only in criminal cases.

Jurisdiction of consular courts in Turkey, 9 Op., 296, Black, (1859.)

5. The salary of a person appointed marshal of the United States consular court at Shanghai begins from the time of his entering upon such duties as are preliminary to his departure for the field of his services after taking the oath of office and giving the bond prescribed by law.

Hughston's case, 10 Op., 250, *Bates*, (1862.)

6. A consular court of the United States in Japan cannot, in the case of a suit by a person not a citizen of the United States against an American merchant, entertain a plea of set-off further than to the extent of the claim asserted by the plaintiff.

Consular courts in Japan, 11 Op., 474, *Speed*, (1866.)

7. Under the treaty with that country of 1858, (Pnb. Trs. 452,) and the laws of the United States, (12 Stat., 72 R. S., § 4083,) a consular court cannot render a judgment against a person of foreign birth not a citizen of the United States.

Id.

8. Where consular courts are clothed with criminal jurisdiction, the rule applies that a sentence of imprisonment cannot be legally executed beyond the territorial jurisdiction of the court which pronounced it, unless authority there to execute the sentence is conferred by the legislature.

Case of three convicts at Smyrna, 14 Op., 522, *Williams*, (1875.)

9. Hence, in the absence of any law-giving power to send convicts of the consular courts at Smyrna and Constantinople to this country for imprisonment, if such convicts were brought to the United States for that purpose they could not legally be held.

Id.

10. Semble, that, under the present statutory provisions (R. S., §§ 4121 to 4125, inclusive) it is contemplated that the sentences of those courts, pronounced in the exercise of their criminal jurisdiction, are to be executed only in the country where the trial and punishment were had.

Id.

11. It cannot be contended that every consul, by virtue of his office, has power to exercise the judicial functions claimed in this case; for it is conceded that this is not the case in Christian countries. And while, on the other side, it is also conceded that in pagan and Mahometan countries it is usual for the ministers and consuls of European states to exercise judicial functions as between their fellow-subjects or citizens, it clearly appears that the extent to which this power is exercised depends upon treaties and laws regulating such jurisdiction. The instructions given by the British Foreign Office to their consuls in the Levant, in 1844, as quoted by Mr. Phillimore, do not claim anything more.

Dainese vs. Hale, 91 U. S. R., S. C. 13.

12. Historically, it is undoubtedly true, as shown by numerous authorities quoted by Mr. Warden in his treatise on "The Origin and Nature of Consular Establishments," that the consul was originally an officer of large judicial as well as commercial powers, exercising entire municipal authority over his countrymen in the country to which he was accredited. But the changed circumstances of Europe, and the prevalence of civil order in the several Christian states, have had the effect of greatly modifying the powers of the consular office; and it may now be considered as generally true that, for any judicial powers which may be vested in the consuls accredited to any nation, we must look to the express provisions of the treaties entered into with that nation, and to the laws of the States which the consuls represent.
Ib.
13. The treaty between the United States and the Ottoman Empire of 1862, (Pub. Trs., 585,) if not that made in 1830, (Pub. Trs., 583,) has the effect of conceding to the United States the same privilege, in respect to consular courts and the civil and criminal jurisdiction thereof, which is enjoyed by other Christian nations; and the act of Congress of 22d June, 1860, (12 stat., 72 R. S., § 4083,) established the necessary regulations for the exercise of such jurisdiction.
Ib.
14. But as this jurisdiction is, in terms, only such as is allowed by the laws of Turkey, or its usages in its intercourse with other Christian nations, those laws or usages must be shown in order that the precise extent of such jurisdiction may be known.
Ib.
15. A consular court is a court of limited jurisdiction, and all the jurisdictional facts must be alleged in the libel or petition; otherwise it will be insufficient.
Steamer Spark vs. Lee Choi Chum, 1 Sawyer, 713.
16. In cases of appeal from the consular and ministerial courts of China and Japan to the circuit court of the United States for the district of California, the record on appeal must show an allowance of the appeal.
Ib.
17. A citation is necessary, unless the appeal is allowed in open court. *Quere*, whether a citation is not always necessary, if the consular court has once adjourned after rendering a decree, there being no terms of such courts.
Ib.

CONSULAR OFFICERS.

See Compensation.

Foreign Consuls.

Office.

Seamen.

1. A consul is not a public minister, nor entitled to the privileges attached to the person of such an officer.

Case of British consul at Norfolk, 1 Op., 41 Bradford, (1794.)

2. Consuls cannot collect three months' extra wages from the master or owner of a vessel wrecked or stranded abroad and sold.

Case of discharged seamen, 1 Op., 148, Lincoln, (1804.)

The brig Pamela, 2 Op., 418, Berrien, (1831.)

3. Attestation is not essential to the validity of the consular bond. (See R. S., § 1697.)

Mr. Strong's bond, 1 Op., 378, Wirt, (1820.)

4. The powers and duties of American consuls as to seamen's wages are confined to vessels owned by citizens of the United States, and constituting a part of our mercantile marine by sailing under our flag.

Shipmasters and seamen, 2 Op., 448, Berrien, (1831.)

5. The funeral expenses of a deceased consul to the Barbary States, and the incidental and contingent expenses of the consulate after his death, are fair items of charge on the fund for the contingent expenses of foreign intercourse; such consul having been a diplomatic agent.

Coxe's case, 2 Op., 521, Taney, (1832.)

6. When the son of the deceased consul remains at the port and discharges the duties of consul, which are recognized by the Government, he may receive the compensation fixed by law for such services.

Id.

7. Such was the practice of the Government in the cases of Messrs. Folsom, Heap, Simpson, and Hodgson.

Id.

8. The 2d section of the act of 1803 (2 Stat., 203; R. S., § 4309) does not require the papers of an American vessel in a foreign port to be delivered to the consul, except in cases where it is necessary to make an entry at the custom-house.

Case of the consul at Nassau, 4 Op., 390, Mason, (1845.)

9. Masters of American vessels entering foreign ports where there is an American consul, and remaining so long that, by the local regu-

lations, they are required to enter and afterward to clear in regular form, are required to deposit their registers, &c., with such consul, irrespective of the purpose for which the port was entered.

Case of the commercial agent at St. Thomas, 5 Op., 161, Johnson, (1849.)

10. In order that the master of a ship on her "arrival" in a foreign port shall be compellable to deposit the ship's papers with the consul, the arrival must be such an one as involves entry and clearance.

Case of the commercial agent at St. Thomas, 6 Op., 163, Cushing, (1853.)

11. Consuls have no authority to order the sale of a ship in a foreign port.

The bark Serene, 6 Op., 617, Cushing, (1854.)

12. If, on such sale, a consul retains money for the payment of seamen's wages, he acts at his own peril, and is responsible to the owners.

Ib.

13. The United States is not responsible in damages for moneys illegally received by consuls, or for any other act of malfeasance by them in office.

Ib.

14. Consuls of the United States have no lawful authority, as such, to solemnize marriages in countries comprehended within the pale of the international public law of Christendom, (but see subsequent act, 1860, 12 Stat., 79; R. S., § 4082;) otherwise, in countries not Christian, where, by convention, or in fact where the rights of extritoriality are possessed by citizens of the United States.

Celebration of marriages, 7 Op., 18 Cushing, (1854.)

15. The power of the President and the power of Congress in reference to the appointment of consuls and consular officers discussed, and the powers, duties, and liabilities of such officers considered.

Concerning appointment of consuls, 7 Op., 242, Cushing, (1855.)

16. A consul may be authorized to communicate directly with the government near which he resides, but he does not thereby acquire the diplomatic privileges of a minister.

Ritter's case, 7 Op., 342, Cushing, (1855.)

17. Nor does he, as consul, acquire such privileges by being appointed, as he may be at the same time, chargé d'affaires.

Ib.

18. A marriage cannot be solemnized by a consul of the United States in Germany.

Ib.

19. The extritoriality of foreign consuls in Turkey and other Mahomedan countries is entirely independent of the fact of diplomatic representation, and is maintained by the difference of law and religion, being but incidental to the fact of the established extritoriality of Christians in all countries not Christian.
Ib.
20. Consuls, as international commercial agents, originated in the colonial municipalities of the Latin Christians in the Levant, which municipalities were self-governing through their "consuls," the ancient title of municipal magistrates in Italy.
Ib.
21. Rights of private extritoriality having ceased to exist in Christendom, foreign consuls have ceased, mostly, to be municipal magistrates of their countrymen there; but they still continue not only international agents but also administrative and judicial functionaries of their countrymen in countries outside of Christendom.
Ib.
22. Masters of American vessels are subject to prosecution in the name of the consul for omission to deposit with him the papers according to law, but not to indictment. (2 Stat., 203, § 2; R. S., § 4309.)
The Gauntlet and the Alleganian, 7 Op., 395, Cushing, (1855.)
23. Vice-consuls are competent to hold consular courts in China, when duly appointed or approved as such by the Secretary of State. (See act of February 1, 1876, amending R. S., § 4130.)
Judicial authority in China, 7 Op., 495, [511,] Cushing, (1855.)
24. The face of a banker's circular-letter of credit, found in the possession of an American dying abroad, is not assets to that amount upon which a consul may charge commissions as administrator.
Alexander's case, 7 Op., 542, Cushing, (1855.)
25. A substitute or vice-consul, left in charge of the consulate during the temporary absence of the consul, is to be compensated out of the statute emoluments of the office, subject to regulations of the Department. An acting consul in charge of a consulate during actual vacancy of the consulate, is entitled to receive the statute compensation of the office.
Compensation of acting consuls, 7 Op., 714, Cushing, (1856.)
26. American consuls have no authority to require masters of American vessels to take on board and convey to the United States for trial, persons accused of crime.
Case of Seneca S. Bishop, 7 Op., 722, Cushing, (1856.)
27. Consuls of the United States in foreign countries are required to detain persons charged with the commission of crimes at sea or

in port, under circumstances giving jurisdiction to the courts of the United States. They may inquire into the charges and have authority to send such persons home for trial, but as a general proposition, apart from treaty provisions, have no criminal jurisdiction.

Blythe, consul at Havana, 8 Op., 380, Cushing, (1857.)

28. The authority of the consul in such case is ministerial and not judicial in its nature.

Ib.

29. The commander of an American vessel is required to deliver his register and other ship's papers to the consul at a foreign port, only in cases where he is compelled to make an entry at the custom-house.

The New York and Havre steamers, 9 Op., 256, Black, (1858.)

30. A consul of the United States, under the act of 1803, (2 Stat., 203; R. S., § 4309,) has no authority, by withholding a ship's papers, to compel payment of demands of creditors against the vessel.

Powers of consuls, 9 Op., 384, Black, (1859.)

31. A consul, under section 28 of the act of 1856, (11 Stat., 63; R. S., § 1718,) has authority to detain the papers of a ship to enforce only the payment of wages in certain cases and consular fees; but he has not a general power of deciding upon all manner of disputed claims against American vessels.

Ib.

32. A consul may recover the penalties incurred by the master of a vessel for neglecting to deposit his papers, in a court of competent jurisdiction, but he has no right to enforce otherwise the payment of the penalties.

Ib.

33. A consul of the United States in a foreign port has no power to retain the papers of vessels which he may suspect are destined for the slave-trade.

Detention of ship's papers, 9 Op., 426, Black, (1860.)

34. No more than fifty cents can be charged for certifying invoices and for certifying the place of growth or production of goods made duty free by the reciprocity treaty with Great Britain of 1854, although such certificate may be accompanied by an attestation of the official character of a magistrate and of the value of the goods. Consuls, as well as consular officers and agents, are subject to this restriction. It applies to all the British North American provinces included within the reciprocity treaty. (Pub. Trs., 329, terminated by notice.)

Consular fees, 9 Op., 441, Black, (1860.)

35. The penal provisions of section 17 of the act of 1856, (11 Stat., 58; R. S., § 1723,) only apply to the taking of greater fees than are allowed by the act itself, and do not, therefore, extend to the taking of greater fees than are allowed by section 3 of the act of 1859, (11 Stat., 404; repealed by sec. 3, act of 1864, 13 Stat., 140; R. S., § 1721.)

Case of the consul at Halifax, 9 Op., 500, Black, (1860.)

36. The master of an American vessel sailing to or between ports in the British North American provinces is required, on arriving at any such port, to deposit his ship's papers with the American consul.

The act of 1861, (12 Stat., 315; R. S., § 4309,) does not change or affect the duties of masters of American vessels, running regularly, by weekly or monthly trips, or otherwise, between foreign ports, as imposed by act of 1803, (2 Stat., 203; R. S., § 4309.)

American steamers at Port Sarnia, 11 Op., 73, Bates, (1866.)

37. If an American vessel is obliged by the law or usage prevailing at a foreign port to effect an entry, and she does enter conformably to the local law or usage, her coming to such foreign port amounts to an "arrival," within the meaning of section 2 of act of 1803, independently of any ulterior destination of the vessel, or the time she may remain, or intend to remain, at such port, or the particular business she may transact there.

Id.

38. The fees receivable by a consul for receiving and delivering a vessel's register and other papers, under the act of 1803, (2 Stat., 203; R. S., § 4309,) are prescribed by regulations of the President, under act of 1856, (11 Stat., 57; R. S., § 1745.)

Id.

39. The act of 1861, (12 Stat., 315; R. S., § 1720,) was merely intended to limit the amount of fees payable annually to American consuls by the masters of American vessels running, by regular trips, to or between foreign ports.

Id.

40. The provisions of the act of 1803, (2 Stat., 203; R. S., § 4309,) in reference to the deposit of ships' papers with American consuls, apply to American steam ferry-boats running between Detroit and Windsor, Canada West. (But see subsequent act of 1872, 17 Stat., 214; R. S., § 2792.)

Case of the consul at Windsor, 11 Op., 237, Speed, (1865.)

41. The consul of the United States at Honolulu has the right and power, without interference from the local courts, to determine,

as between citizens of the United States, who comprise the crew of an American vessel, and are bound to fulfill the obligations imposed by the shipping articles.

Judicial powers of consul at Honolulu, 11 Op., 508, Speed, (1866.)

42. No law or regulation requires an American consul to certify to the official character and acts of a foreign notary public. The consuls of the United States are authorized, by section 24 of the act of 1856, (11 Stat., 61; R. S., § 1750,) to perform any notarial acts; but a certificate as to the official character of a foreign notary is not a notarial act; and if it were such, the duty would not be imperative.

Edward Lawrence's case, 12 Op., 1, Stanbery, (1866.)

43. Section 3 of act of 1866 (14 Stat., 226; R. S., § 1729) is limited to unsalaried consuls and commercial agents, and does not embrace consular agents.

Compensation of consular agents, 12 Op., 97, Stanbery, (1866.)

44. Consular agents are entitled to the compensation allowed them under section 15 of act of 1856, (11 Stat., 57; R. S., § 1703.)

Ib.

45. The fees of consular agents, receivable under the act of 1856, are not returnable in the accounts of the consuls, to whom they are subordinate, under the act of 1866.

Ib.

46. The fees collected by consular agents, which are payable under the act of 1856 to their principals, are returnable in the accounts of such principals.

Ib.

47. Consuls may retain \$1,000 out of the aggregate of moneys received from consular agencies or vice-consulates. (See R. S., § 1733.)

Fees of consuls, 12 Op., 527, Evarts, (1868.)

48. Where the crew of an American ship had been shipped by the master in the United States, and the shipping-articles contained a clause that "all moneys were to be paid in United States currency, or its equivalent in gold, at the current rate of exchange:" Held, that, in settling some accounts with the master at Singapore, India, for the wages of his crew, the United States consul there should have allowed a deduction from the pay of the seamen of the difference between United States currency and gold or silver, the currency of Singapore, and the cost of exchange thereon between India and America.

Case of the ship Fearless, 13 Op., 557, Akerman, (1872.)

49. A consul's bond takes effect from the time of its approval by the Secretary of State. (Act 1856, 11 Stat., 56; § 13; R. S., § 1697.) Where an appointee was commissioned consul on 18th January, and his bond, dated 13th of the same month, was not approved until the 27th: Held valid under the said act.
Wilson's case, 14 Op., 7, Williams, (1872.)
50. A consul has no authority to demand and receive from the master of a vessel the money and effects belonging to a deserter from the vessel.
Deserters of the bark Bolivia, 14 Op., 520, Williams, (1875.)
51. The steps which should be taken by the master, with reference to the disposition of such property, indicated.
Ib.
52. It is not a consular function to authenticate the laws of a foreign state, and the certificate of a consul to that effect is not evidence.
Church vs. Hubbard, 2 Cranch, 187, [237.]
53. A consular certificate is not admissible to prove the correctness of a translation.
Ib., [239.]
54. Consuls are approved and admitted by the local sovereign. If guilty of illegal or improper conduct the exequatur which has been given may be revoked, and they may be punished or sent out of the country, at the option of the offended government. In civil and criminal cases, they are subject to the local law in the same manner with other foreign residents owing a temporary allegiance to the state. A trading consul, in all that concerns his trade, is liable in the same way as a native merchant. The character of consul does not give any protection to that of merchant when they are united in the same person.
Coppell vs. Hall, 7 Wallace, 553.
55. The provision of the act of May 1, 1810, fixing a salary to the consul at Algiers, and assigning to him certain duties, treating that place as belonging to a Mohammedan power, ceased to be operative when the country, of which it was the principal city, became a province of France.
Mahoney vs. United States, 10 Wallace, 62.
56. The consul of a nation may claim on behalf of its subjects, in the absence of any authorized agent.
The London Packet, 1 Mason, 14.
57. A consul is liable to civil suits, like any other individual, in the tribunals of the country in which he resides.
Gittings vs. Crawford, Taney's Dec., 1.

58. A consul of a foreign power, though not entitled to represent his sovereign in a country where the sovereign has an ambassador, is entitled to intervene for all subjects of that power interested.

Robson vs. The Huntress, 2 Wallace, jr., 59.

59. If a seaman be entitled to the privileges of an American seaman, and be destitute, the consul is the proper judge as to the ship on board of which he should be placed for his return to the United States.

Matthews vs. Offley, 3 Sumner, 115.

60. A consul has no right to detain seamen in prison as a punishment, after he has discharged them from their contract at the request of the master.

Jordan vs. Williams, 1 Curtis, 69, [85.]

61. The action of a consul in discharging a seaman in a foreign port is not conclusive on the court where a libel is filed for wages.

Campbell vs. The Uncle Sam, 1 McAllister, 77.

62. The advice of an American consul, in a foreign port, gives to the master of a vessel no justification for an illegal act.

Wilson vs. The Mary, Gilpin, 33.

63. The right given to seamen by the act of 1840, (5 Stat., 396; R. S. § 4567,) to lay their complaints before the American consul in foreign ports, is one of great importance, which a court of admiralty will carefully protect.

Morris vs. Cornell, 1 Sprague, 62.

64. Where a minor concealed himself, without the knowledge of his father, on board of a whaling-ship, and was not discovered till the vessel was at sea, and was then left by the master in the care of the American consul at the first port at which he touched, it was the duty of the consul to provide for and send him home to the United States.

Luscom vs. Osgood, 1 Sprague, 82.

65. No private person can interpose in a case of prize, and make claim for the restoration of captured property on the ground that the capture was made in neutral waters.

Whatever claim is made must be presented by the neutral nation, whose rights have been infringed. Even a consul cannot, by virtue of his office merely, interpose.

The Lilla, 2 Sprague, 177.

66. Notwithstanding the very sweeping language of section 3 of act 1803 (2 Stat., 203; R. S., § 4576) and section 8 of act 1840, (5 Stat., 395,) requiring masters of American vessels to give bond for the return of all the crew, unless discharged in a foreign country with con-

sent of a consul, yet these sections, construed with the aid of the other parts of these statutes, cannot be held to require a master to return to the United States foreign seamen shipped at their own home, for a particular cruise, ending where it began, and discharged there according to the terms of their contract, though without the consent of a consul.

United States vs. Parsons, 1 Lowell, 107.

67. The consent of a consul could not be rightly withheld in such a case, and there is no law requiring it to be asked.

Ib.

68. Whether the bond is intended to be given for seamen, even if shipped in the United States, who by the terms of their engagement are entitled to be discharged abroad, *quere*.

Ib.

69. A consul's certificate is not evidence of acts not official or within his personal knowledge. The certificate of a consul in a foreign port as to transactions¹ concerning a seaman's discharge, not within his official duties, is not evidence.

Brown vs. The Independence, *Crabbe's Rep.*, 54.

70. A consul, particularly in an enemy's country, has no authority by virtue of his office to grant a license or permit which will have the effect of exempting a vessel of the enemy from capture and confiscation.

Rogers vs. The Amado, 1 Newberry, *Adm.*, 400.

71. Under the act of 18th August, 1856, (11 Stat., 56; R. S., § 1738,) which provides that "no consular officer shall exercise diplomatic functions in any case unless expressly authorized by the President so to do," a retiring minister cannot install a consul in charge of the legation, nor can the consul receive the pay provided by law for a *chargé d'affaires*.

Otterbourg vs. United States, 5 C. Cls., 430.

CONTINGENT EXPENSES.

1. The strictly personal expenses of the commissioners, under the convention with New Granada, are not payable out of the contingent fund of the commission provided by the act of 1861, sec. 8, (12 Stat., 146.) The language of the act, in making the appropriation, was: "That for the compensation of the officers authorized by the third section, and the contingent expenses of the commissioner on the part of the United States," &c.

Leavenworth's account, 10 Op., 216, *Bates*, (1862.)

CONTINGENT EXPENSES OF FOREIGN INTERCOURSE.

1. The funeral expenses of a deceased consul to the Barbary States, and the incidental and contingent expenses of the consulate after his death, are fair items of charge on the fund for the contingent expenses of foreign intercourse, such consul being a diplomatic agent.

Coxe's case, 2 Op. 521, Taney, (1832.)

2. The expense of recasting cannon, &c., to be presented to the Imaum of Muscat, in return for presents received, may be defrayed from the appropriation for the contingent expenses of foreign intercourse.

Presents to the Imaum of Muscat, 4 Op., 358, Mason, (1845.)

3. This appropriation is placed at the disposal of the Executive, who is charged with the care and management of all our foreign relations.

And, as it has been the practice of our Government, from its earliest history, to interchange presents with the semi-barbarous nations of Asia and Africa, and as the Executive is vested with a discretion respecting the manner in which friendly relations with them can be best maintained, it follows that, if he shall be of opinion that the public interests will be promoted by tendering a present in return for one received, he may legally do so, and cause the expense thereof to be defrayed from the funds thus placed at his disposal.

Id.

CONTRABAND.

See Neutrality.

1. By the modern law of nations provisions are not, in general, deemed contraband; but they may become so, although the property of a neutral, on account of the particular situation of the war, or on account of their destination. If destined for the ordinary use of life in the enemy's country, they are not, in general, contraband; but it is otherwise if destined for military use. Hence, if destined for the army or navy of the enemy, or for his ports of naval or military equipment, they are deemed contraband. Another exception from being treated as contraband is, where the provisions are the growth of the neutral exporting country. But if they be the growth of the enemy's country, and more especially if the property of his subjects, and destined for enemy's use, there does not seem any good reason for the exemption; for, as Sir William Scott has observed, in such a case the party has not only gone out of his way for the supply of the enemy, but he has assisted him by taking off his surplus commodities.

The Commerceen. 1 Wheaton, 382, [388.]

2. Generally, when contraband goods have been landed, and the vessel has proceeded on her voyage, neither the vessel nor the remaining cargo are liable to seizure; *aliter*, if the destination and papers are false.

Carrington vs. Merchants' Ins. Co., 8 Peters, 495.

3. According to the modern law of nations—for there has been some relaxation in practice from the strictness of the ancient rules—the carriage of contraband goods to the enemy subjects them, if captured *in delicto*, to the penalty of confiscation; but the vessel and the remaining cargo, if they do not belong to the owner of the contraband goods, are not subject to the same penalty. The penalty is applied to the latter only when there has been some actual co-operation, on their part, in a meditated fraud upon the belligerents, by covering up the fraud under false papers, and with a false destination.

Id.

4. Neutrals may convey to belligerent ports not under blockade whatever belligerents may desire to take, except contraband of war, which is always subject to seizure when being conveyed to a belligerent destination, whether the voyage be direct or indirect; such seizure, however, is restricted to actual contraband, and does not extend to the ship or other cargo, except in cases of fraud or bad faith on the part of the owners or of the master with their sanction.

Vessels conveying contraband cargo to belligerent ports not under blockade, under circumstances of fraud or bad faith, are liable to seizure and condemnation from the commencement to the end of the voyage.

The Bermuda, 3 Wallace, 514.

5. The trade of neutrals with belligerents in articles not contraband is absolutely free unless interrupted by blockade. The conveyance by neutrals to belligerents of contraband articles is always unlawful, and such articles may always be seized during transit by sea.

The Peterhoff, 5 Wallace, 28.

6. The classification of goods as contraband or not contraband, which is best supported by American and English decisions, divides all merchandise into three classes:

I. Articles manufactured and primarily or ordinarily used for military purposes in time of war.

II. Articles which may be and are used for purposes of war or peace, according to circumstances.

III. Articles exclusively used for peaceful purposes.

Id.

7. Merchandise of the first class, destined to a belligerent country or places occupied by the army or navy of a belligerent, is always contraband; merchandise of the second class is contraband only when actually destined to the military or naval use of a belligerent; while merchandise of the third class is not contraband at all, though liable to seizure and condemnation for violation of blockade or siege.

Ib.

8. Contraband articles contaminate the parts not contraband of a cargo if belonging to the same owner, and the non-contraband must share the fate of the contraband.

Ib.

9. In modern times conveyance of contraband attaches in ordinary cases only to the freight of the contraband merchandise. It does not subject the vessel to forfeiture.

Ib.

10. Money, silver-plate, and bullion, when destined for hostile use, or for the purchase of hostile supplies, are contraband of war. In this case the determination of the question whether such articles, part of the outward-bound cargo of the vessel, were contraband devolved upon the commanding general.

United States vs. Diekelman, 92 U. S. R., S. C., 520.

11. Admitting that provisions are not, in general, contraband of war, it is clear that they become so when destined to a port of naval equipment of an enemy, and *a fortiori*, when destined for the supply of his army.

Maisonnaire vs. Keating, 2 Gallison, 335.

CONTRACTS.

See Seamen.

1. *Semble*, that if the provisions of law which require certain contracts to be advertised are disregarded, the contracts, while they remain executory, and without commencement of performance, are subject to be rescinded.

Charles Knap's case, 6 Op., 406, Cushing, (1854.)

2. When any agent of the United States, with due authority of law, makes a contract with any person for its use and benefit, such agent is not responsible to the party, whose only remedy is against the Government. If a public officer or agent make a contract without authority, and which, therefore, does not bind the Government, he is himself responsible to the other contracting party. And such officer or agent, although contracting for the Government with due authority, may, if he see fit, make himself the responsible party, either exclusively or in addition to the Government.

Benson's case, 7 Op., 88 Cushing, (1855)

3. It is a sufficient objection to an unexecuted contract made by an officer of the Government that he has neglected to comply with an act of Congress requiring that proposals shall precede the letting of the contract.

Case of Jones and others, 10 Op., 416, Bates, (1862.)

4. But, after a party has entered into a contract with the Government in good faith, and has so far performed his part of the same that to rescind it, or declare it illegal, and therefore incapable of execution, would subject him to loss and injury, while the Government would yet enjoy the benefits of his labor or expenditure, the contract cannot be avoided, or changed to the injury of the other party, by the Government, on the ground that it was made without advertising for proposals.

Ib.

5. Sections 1781 and 1782 of the Revised Statutes make it illegal for an officer of the United States to have that sort of connection with a Government contract which an agent, attorney, or solicitor assumes when he procures, or aids in procuring, such contract for another, or when he prosecutes for another any claim against the Government founded thereon.

Washburn's case, 14 Op., 482, Williams, (1874.)

6. But there is in the statutes no general provisions whereby officers of the executive branch of the Government are forbidden to contract directly with the Government as principals in matters separate from their offices and in no way connected with the performance of their official duties; nor are those officers forbidden to be connected with such contracts, after they are procured, by acquiring an interest therein.

Ib.

7. It is the duty of the Secretary of War to see that contracts which belong to his office are properly and faithfully executed, whether he made the contracts himself or conferred authority on others to make them; and if he becomes satisfied that contracts which he has made are being fraudulently executed, or that those made by others were made in disregard of the rights of the Government, or with the intent to defraud it, or are being unfaithfully executed, it is his duty to interpose, arrest the execution, and adopt effectual measures to protect the Government against the dishonesty of subordinates.

United States vs. Adams, 7 Wallace, 463.

COOLIE TRADE.

1. The coolie-trade is not within the acts of Congress prohibiting the slave-trade. (But see acts of 1862 and 1869, R. S., § 2158, *et. seq.*)

Coolie Trade, 9 Op., 282, Black, (1859.)

COURT OF CLAIMS.

See Claims.

COURTS IN FOREIGN COUNTRIES.

See Commanding General.

1. It is unusual for military commanders to exercise the right to erect courts; and nothing will be presumed in favor of tribunals so established.

Snell vs. Fausatt, 1 Washington, 271.

CREW.

See Seamen.

1. Whenever, in a statute, the words master and crew occur in connection with each other, the word crew embraces all the officers as well as the common seamen.

United States vs. Winn, 3 Sumner, 209, [212.]

2. One who secretes himself on board a vessel and discovers himself after the vessel is at sea, is not one of the crew, though he works as such in pursuance of the requirement of the master that he should work as a condition of his having food.

United States vs. Small, 2 Curtis, 241.

CRIMES.

See Consular Officers.

Exterritoriality.

Extradition.

1. It is treason for a citizen, or any other person within the United States, not commissioned under France, to aid and abet that nation in her maritime war with the United States, and the offender may be tried and punished according to our laws.

Treason, 1 Op., 84, Lee, (1798.)

2. Citizens of the United States who aid a nation with whom we are at war on the high seas, against the United States, are guilty of treason.

The pirate Nigre, 1 Op., 85, Lee, (1798.)

3. The authority of the General Government to take, forcibly detain in custody, and bring to this country from Europe, a person charged with barratry on private property, is doubtful.

Clifton's case, 1 Op., 123, Lincoln, (1802.)

4. A Texan armed schooner cannot be treated as a pirate under the act of 1790 (1 Stat., 112; R. S., § 5372) for capturing an American merchantman, on the alleged ground that she was laden with provisions, stores, and munitions of war for the use of the army of Mexico, with the government of which Texas, at the time, was in a state of revolt and civil war.

The Texan schooner Invincible, 3 Op., 120, Butler, (1836.)

5. Authority of consuls to detain and send to the United States persons charged with crime, discussed.

Blythe, consul at Havana, 8 Op., 380, Cushing, (1857.)

6. To make the firing of one vessel into another a piratical aggression, within the act of 1819, (3 Stat., 510; R. S., § 5368,) it must be a first aggression, unprovoked by any previous act of hostility or menace from the other side.

The General Miramon and Marquis de la Habana, 9 Op., 455, [456,] Black, (1860.)

7. Robbery on the lakes is piracy, within the meaning of our extradition treaty with Great Britain of 1842. (Pub. Trs., 320.)

Lake Erie pirates, 11 Op., 114, Bates, (1864.)

8. Where a portion of the crew of the steamer *Edgar Stewart* forcibly displaced the master from command, and took possession of the vessel: Held, that this did not constitute the offense of piracy, but of mutiny; that, for the latter offense, the parties charged are liable to be tried and punished under the laws of the United States, and that they may be tried therefor in any district into which they are first brought.

The Edgar Stewart, 14 Op., 589, Hill, acting, (1872.)

9. A commission issued by Aury, as "Brigadier of the Mexican Republic," (a republic whose existence is unknown and unacknowledged,) or as "Generalissimo of the Floridas," (a province in the possession of Spain,) will not authorize armed vessels to make captures at sea. Under the particular circumstances of this case, showing that the seizure was made, not *jure belli*, but *animo furandi*, the commission was held not to exempt the prisoner from the charge of piracy.

United States vs. Klintock, 5 Wheaton, 144.

10. The act of 1819, § 5, (3 Stat., 513; R. S., § 5368,) referring to the law of nations for a definition of the crime of piracy, is a constitutional exercise of the power of Congress to define and punish that crime. Piracy is defined by the law of nations with reasonable certainty. Robbery, or forcible depredation upon the sea, *animo furandi*, is piracy by the law of nations.

United States vs. Smith, 5 Wheaton, 153.

11. A vessel loses her national character by assuming a piratical character, and a piracy committed by a foreigner from on board such a vessel upon any other vessel whatever is punishable under sec. 8 of the act of 1790, (1 Stat., 113; R. S., § 5360.)

United States vs. Pirates, 5 Wheaton, 184.

12. Pirates may, without doubt, be lawfully captured on the ocean by the public or private ships of every nation; for they are, in truth, the common enemies of all mankind, and, as such, are liable to the extreme rights of war. And a piratical aggression by an armed vessel sailing under the regular flag of any nation may be justly subjected to the penalty of confiscation for such a gross breach of the law of nations. But every hostile attack, in a time of peace, is not necessarily piratical. It may be by mistake, or in necessary self-defense, or to repel a supposed meditated attack by pirates. It may be justifiable, and then no blame attaches to the act; or it may be without just excuse, and then it carries responsibility in damages. If it proceed further, if it be an attack from revenge and malignity, from gross abuse of power and a settled purpose of mischief, it then assumes the character of a private, unauthorized war, and may be punished by all the penalties which the law of nations can properly administer.

The Marianna Flora, 11 Wheaton, 40, 41.

United States vs. Brig Malek Adhel, 2 Howard, 236.

13. Piracy is defined by the law of nations to be a forcible depredation upon property on the high seas, without lawful authority, done *animo furandi*; that is, as defined, in this connection, in a spirit and intention of universal hostility. A pirate is said to be one who roves the sea in an armed vessel, without any commission from any sovereign state, on his own authority, and for the purpose of seizing by force and appropriating to himself, without discrimination, every vessel he may meet.

United States vs. Baker, 5 Blatchford, 11, 12.

DEBTS BY AND TO UNITED STATES.

1. The United States has the right to apply moneys due to an officer for pay and emoluments to extinguish a debt due from him to the United States.

Gratiot vs. United States, 15 Peters, 336.

DECEASED FOREIGNERS.

See Foreign Decedents.

DECEDENTS' ESTATES.

See *Consular Officers.*
Foreign Consuls.
Foreign Decedents.

DECLARATION OF WAR.

See *War.*

DE FACTO GOVERNMENT.

See *Sovereignty.*
Civil War.

1. The legislature of Texas * * constituted one of the departments of a State government established in hostility to the Constitution of the United States. It cannot be regarded, therefore, in the courts of the United States as a lawful legislature, or its acts as lawful acts. And yet it is an historical fact that the government of Texas, then in full control of the State, was its only actual government; and certainly, if Texas had been a separate State, and not one of the United States, the new government, having displaced the regular authority, and having established itself in the customary seats of power, and in the exercise of the ordinary functions of administration, would have constituted, in the strictest sense of the words, a *de facto* government, and its acts, during the period of its existence as such, would be effectual, and, in almost all respects, valid. And, to some extent, this is true of the actual government of Texas, though unlawful and revolutionary, as to the United States.

Texas vs. White, 7 Wallace, 700, [732, 733.]

2. It is not necessary to attempt any exact definitions within which the acts of such a State government must be treated as valid or invalid. It may be said, perhaps with sufficient accuracy, that acts necessary to peace and good order among citizens, such, for example, as acts sanctioning and protecting marriage and the domestic relations, governing the course of descents, regulating the conveyance and transfer of property, real and personal, and providing remedies for injuries to person and estate, and other similar acts, which would be valid if emanating from a lawful government, must be regarded in general as valid when proceeding from an actual, though unlawful, government; and that acts in furtherance or support of rebellion against the United States, or intended to defeat the just rights of citizens, and other acts of like nature, must, in general, be regarded as invalid or void.

Id.

3. We admit that the acts of the several States, in their individual capacities, and of their different departments of government, executive, judicial, and legislative, during the war, so far as they did not impair, or tend to impair, the supremacy of the national authority, or the just rights of citizens under the Constitution, are, in general, to be treated as valid and binding. The existence of a state of insurrection and war did not loosen the bands of society, nor do away with civil government, nor the regular administration of the laws. Order was to be preserved, police regulations maintained, crime prosecuted, property protected, contracts enforced, marriages celebrated, estates settled, and the transfer and descent of property regulated precisely as in time of peace. No one, that we are aware of, seriously questions the validity of judicial or legislative acts in the insurrectionary States touching these and kindred subjects, where they were not hostile in their purpose or mode of enforcement to the authority of the National Government, and did not impair the rights of citizens under the Constitution.

Horn vs. Lockhart, 17 Wallace, 570, [580.]

4. The recognition of the existence and validity of the acts of the so-called Confederate government, and that of the States which yielded a temporary support to that Government, stand on very different grounds, and are governed by very different considerations.

The latter, in most, if not all, instances, merely transferred the existing State organization to the support of a new and different national head. The same constitutions, the same laws for the protection of property and personal rights remained, and were administered by the same officers. These laws, necessary in their recognition and administration to the existence of organized society, were the same, with slight exceptions, whether the authorities of the State acknowledged allegiance to the true or the false Federal power. They were the fundamental principles for which civil society is organized into government in all countries, and must be respected in their administration under whatever temporary dominant authority they may be exercised. It is only when, in the use of these powers, substantial aid and comfort was given or intended to be given to the rebellion, when the functions necessarily reposed in the State for the maintenance of civil society were perverted to the manifest and intentional aid of treason against the Government of the Union, that their acts are void.

The government of the Confederate States can receive no aid from this course of reasoning. It had no existence, except as a conspiracy to overthrow lawful authority. Its foundation was

treason against the existing Federal Government. Its single purpose, so long as it lasted, was to make that treason successful. So far from being necessary to the organization of civil government, or to its maintenance and support, it was inimical to social order, destructive to the best interests of society, and its primary object was to overthrow the Government on which these so largely depended. Its existence and temporary power were an enormous evil, which the whole force of the Government and the people of the United States was engaged for years in destroying.

When it was overthrown it perished totally. It left no laws, no statutes, no decrees, no authority which can give support to any contract, or any act done in its service, or in aid of its purpose, or which contributed to protract its existence. So far as the actual exercise of its physical power was brought to bear upon individuals, that may, under some circumstances, constitute a justification or excuse for acts otherwise indefensible, but no validity can be given by the courts of this country to acts voluntarily performed in direct aid and support of its unlawful purpose.

Sprott vs. United States, 20 *Wallace*, 459, [464, 465.]

5. No doubt the legislature of Georgia in 1861 and 1863, when the enactments were made for the incorporation of the plaintiffs, was not the legitimate legislature of the State. The State had thrown off its connection with the United States, and the members of the legislature had repudiated, or had not taken the oath by which the third section of the sixth article of the Constitution requires the members of the several State legislatures to be bound. But it does not follow from this that it was not a legislature, the acts of which were of force when they were made, and are in force now. If not a legislature of the State *de jure*, it was at least a legislature *de facto*. It was the only law-making body which had any existence. Its members acted under color of office by an election, though not qualified according to the requirements of the Constitution of the United States. Now, while it must be held that all their acts in hostility to that Constitution, or to the Union, of which the State was an inseparable member, have no validity, no good reason can be assigned why all their other enactments, not forbidden by the Constitution, should not have the force which the law generally accords to the action of *de facto* public officers.

United States vs. Insurance Companies, 22 *Wallace*, 99, [101.]

6. Until the Legislative and Executive Departments of the Government recognize the existence of a new foreign government, the Federal courts will not do so. The doctrine in this case applied to the Confederate States.

United States vs. Baker, 5 *Blatchford*, 6

7. When a question arises with reference to the existence or validity of an organization claiming to be the lawful government of a foreign country, the courts are bound by the decision of the executive power; such a question is political and not judicial. The steamer *Hornet* having been seized upon a charge of violation of neutrality, a person claiming to be the agent of the "republic of Cuba" having applied to intervene: Held, that the question being a political one, and the republic of Cuba not having been publicly recognized, such claim could not be allowed.

The Hornet, 2 Abbott, U. S. R., 35.

DEFENSE OF SUITS.

See *Suits*.

DE JURE GOVERNMENT.

See *Sovereignty*.
Civil War.

DEPARTMENTS OF GOVERNMENT.

1. When one department of the Government has lawfully assumed jurisdiction of a particular case, any other co-ordinate department should decline to interfere with or assume to control its legitimate action.

Captures on the Rio Grande, 11 Op., 117, Bates, (1864.)

2. There is no power in the Executive Department to revise or reverse the judgments of the prize or other courts of law of the United States, or to criticise and condemn their supposed errors.

Ib.

3. When the courts have acquired jurisdiction of a case of maritime capture the political department of the Government should postpone the consideration of questions concerning reclamation and indemnities until the judiciary has finally performed its functions in those cases.

Ib.

4. When a court of the United States in the exercise of its discretion has advisedly determined to permit a vessel libelled for violation of the neutrality laws to be released on bond, the Executive Department has no power or duty to interfere with the proceedings.

The Meteor, 12 Op., 2, Stanbery, (1866.)

5. In a controversy between the United States and a foreign sovereign as to boundary, this court must follow the decision of that department of the Government which is intrusted by the Constitution with the care of its foreign relations, especially if sanctioned by the legislative power.

Foster vs. Neilson, 2 Peters, 253.

DEPOSITIONS.

1. A commission was issued by a judge in Cuba to the Spanish consul in New York to take testimony to be used in a criminal prosecution for swindling, and the consul thereupon applied to the district court for a summons to compel the witness to appear and testify. Held, that the court had no power to issue the summons asked for. The only provisions made by Congress on the subject of enforcing the giving of testimony in judicial proceedings pending in a foreign country are those found in the acts of 2 March, 1855, (10 Stat., 630,) and of 3 March, 1863, (12 Stat., 769, R. S. 4071,) neither of which acts applies to this case.

Matter of the Spanish Consul, 1 Benedict, 225.

DESERTING SEAMEN.

See Seamen.

DESTITUTE SEAMEN.

See Seamen.

DIPLOMATIC INTERFERENCE

*See Capture and prize.
Neutrality.*

1. The usage of sovereigns is not to interfere in the administration of justice until the foreign subject who complains has gone with his case to the court of dernier resort.

Pagan's case, 1 Op., 25, Randolph, (1792.)

2. A nation ought not to interfere in the causes of its citizens brought before foreign tribunals, except in a case of refusal of justice or of palpable injustice.

Green's case, 1 Op., 53, Bradford, (1794.)

3. If there are original documents in the archives of a foreign government which tend to support the title of a claimant of some of the public lands, the President ought not, at the request of such claimant, to solicit that government to furnish them.

The Castillero case, 9 *Op.*, 320, *Black*, (1859.)

4. The rule that before a citizen of a country is entitled to the aid of his government in obtaining redress for wrongs done him by another government, he must have sought redress in vain through the judicial tribunal of that other government, is inapplicable where the offending government, by the acts of its proper organ, relieves the injured party from the obligation of pursuing such a course.

Panama transit tax, 13 *Op.*, 547, *Akerman*, (1871.)

5. Where an officer with a party of armed men, acting under an order of a judicial officer of the port of Granada, seized an American vessel at that port, kept possession of it a few hours, and then withdrew pursuant to an order of the same judge, the seizure having been made for the purpose of enforcing a supposed legal right: Held, that this Government ought not to make reclamation in behalf of the owner, as it is presumable that if the proceedings were illegal the judicial tribunals of Nicaragua will afford redress.

Case of the Tipitapa, 13 *Op.*, 554, *Akerman*, (1872.)

6. A Spanish-owned vessel on her way from New York to Havana, being in distress, put, by leave of the admiral commanding the squadron, into Port Royal, S. C., then in rebellion and blockaded by a Government fleet, and was seized as prize of war and used by the Government. She was afterwards condemned as prize, but ordered to be restored. She never was restored; damages for her seizure, detention, and value being awarded: Held, that clearly she was not prize of war or subject to capture, and that her owners were entitled to fair indemnity, although it might well be doubted whether the case was not more properly a subject for diplomatic adjustment than for determination by the courts.

The Nuestra Señora de Regla, 17 *Wallace*, 30.

DIPLOMATIC OFFICERS.

See Compensation.

Office.

Resignation.

1. The President, having the foreign-intercourse fund under his direction, may advance to a minister going from the United States to Chili such part of his salary as he shall deem necessary to the proper fulfillment of public engagements in respect to him.

Case of the minister to Chili, 1 *Op.*, 620, *Wirt*, (1823.)

2. The President, being intrusted with the subject of the diplomatic intercourse of the United States with foreign nations, may, in his discretion, advance money to a minister going abroad. (Act 1823, 3 Stat., 723; R. S., §§ 3648, 1740, 1743.)

Case of the minister to Colombia, 2 Op., 204, Berrien, (1829.)

3. The minister to Madrid is not entitled to charge for office-rent, although similar charges have been allowed to our ministers to London and Paris, the same not being warranted by law, nor having been the usage of the Government. (See 6 Stat., 436, Private Laws.)

Case of the minister to Madrid, 2 Op., 453, Taney, (1831.)

4. The power of the President and the power of Congress in reference to the appointment of "ambassadors and other public ministers" discussed at large.

Ambassadors and public ministers, 7 Op., 186, Cushing, (1855.)

Among others, the following conclusions were reached :

5. The expression "ambassadors and other public ministers," in the Constitution, must be understood as comprehending all officers having diplomatic functions, whatever their title or designation.

Ib.

6. The President has power, by the Constitution, to appoint diplomatic agents, of any rank, at any place, and at any time, subject to the constitutional conditions of relation to the Senate.

Ib.

7. The power to make such appointments is not derived from, and cannot be limited by, any act of Congress, except in so far as appropriations of money are required to provide for the expenses of this branch of the public service. During the early administrations of the Government, the appropriations made for the expenses of foreign intercourse were to be expended in the discretion of the President, and from this general fund ministers whom the President saw fit to name were paid.

Ib.

8. Congress cannot require that the President shall make removals or re-appointments or new appointments of public ministers at a particular time, nor that he shall appoint or maintain ministers of a prescribed rank, at particular courts.

Ib.

9. Where the act of 1855 (10 Stat., 619) declared that from and after the end of the present fiscal year the President shall appoint envoys, &c., held, it could not constitutionally mean, and should not be construed to mean, that the President was required to make any such appointments, but only to determine what should be the salaries of the officers in case they have been or shall be appointed.

Ib.

10. There is no interruption of the authority or renewal of the credentials of American public ministers on a change of President for whatever cause, provided such President continues to represent and exercise the appointing power of the Government.

Construction of Mesilla treaty, 7 Op., 582, Cushing, (1855.)

11. A public minister who was at home at the time of his recall, and who was paid his salary down to the date of his recall, is not entitled, in addition, to compensation for such further time as would be necessarily spent in coming home from the seat of his mission.

Jackson's case, 9 Op., 261, Black, (1858.)

12. It was not the intention of Congress, by the act of 1867, (14 Stat., 412,) forbidding the payment of any money to the then minister to Portugal, to put an end to the Portuguese mission, but simply to prohibit the payment of the salary for personal services of the minister.

The Portuguese mission, 12 Op., 275, Stanbery, (1867.)

13. A minister plenipotentiary from the United States to a foreign power cannot, without the consent of Congress, accept a similar commission from a third power; though he is not prohibited from rendering a friendly service to a foreign government, even that of negotiating a treaty, provided he does not become an officer thereof.

Case of an American minister, 13 Op., 537, Akerman, (1871.)

14. The certificate and seal of the minister resident of Great Britain in Hanover is not a proper authentication for the proceedings of a foreign court or of the proceedings of an officer authorized to take depositions. It is not connected in any way with the functions of the minister. His certificate and seal could only authenticate those acts which are appropriate to his office.

Stein vs. Bowman, 13 Peters, 209.

DIPLOMATIC POWER.

1. It was the practice of the Spanish Crown, during the reign of Charles I and his successors of the Austrian dynasty, to delegate to Spanish viceroys, governors, and captains-general the *jus legationis* as well in Europe as in Asia and America; and that delegation was recognized by the public law of Europe.

Power of Spanish viceroys, 7 Op., 551, Cushing, (1855.)

DIPLOMATIC PRIVILEGE.

*See Privilege from Arrest.
Public Minister.*

DISCOVERY.

1. The title, by discovery, to lands in America occupied by Indians considered.

Johnson and Graham's lessee vs. McIntosh, 8 Wheaton, 543.

DOMICILE.

See *Enemy Property.*
Public Minister.

1. The selection and actual enjoyment of a foreign domicile, with an intent not to return, would not alone constitute expatriation.

Reply to President's inquiries, 14 Op., 295, Williams, (1873.)

2. Obligations of the Government toward its citizens domiciled in foreign countries, who apparently have no intention to return, and who do not contribute to its support, considered; and likewise what should be regarded as evidence of the absence of an intent to return in such cases.

Id.

3. Domicile of a neutral or citizen in an enemy's country subjects his property embarked in trade to capture on the high seas.

The Venus, 8 Cranch, 253

4. If he cause property to be shipped before war be declared, or before its declaration be known, it is, like other enemy's property, liable to capture; but these effects of domicile cease from the moment he puts himself in motion, *bona fide*, to quit the country intending not to return.

Id.

5. A naturalized citizen who, in time of peace, returns to his native country for the purpose of trade, but with the intention of returning again to his adopted country, continuing in the former a year after the knowledge of the existence of war between the two countries for the purpose of winding up a complicated business, and engaging in no new commercial transactions whatever with the enemy, and actually returning to his adopted country in a little more than a year after his first knowledge of the war, is to be considered as having gained a domicile in his native country, and his goods, captured after the war, liable to condemnation,

The Frances, 8 Cranch, 335.

6. Goods, the property of merchants actually domiciled in the enemy's country at the breaking out of a war, are, subject to capture and confiscation as prize.

The Mary and Susan, 1 Wheaton, 46.

7. Where a native citizen of the United States emigrated before a declaration of war to a neutral country, there acquired a domicile, and afterward returned to the United States during the war and reacquired his native domicile, he became a reintegrated American citizen; and could not afterward, *flagrante bello*, acquire a neutral domicile by again emigrating to his adopted country.

The Dos Hermanos, 2 Wheaton, 76.

8. The native character does not revert by the mere return to his native country of a merchant who is domiciled in a neutral country at the time of capture; who afterward leaves his commercial establishment in the neutral country to be conducted by his clerks in his absence; who visits his native country merely on mercantile business, and intends to return to his adopted country. Under these circumstances the neutral domicile still continues.

The Freundschaft, 3 Wheaton, 14.

9. British subjects resident in Portugal, though entitled to great privileges, do not retain their native character, but acquire that of the country where they reside and carry on their trade.

Ib.

10. The property of a house of trade, established in the enemy's country, is condemnable as prize, whatever be the personal domicile of the partners.

The Freundschaft, 4 Wheaton, 105.

11. Rules concerning the evidence of domicile stated. Kosciusko's "declarations that his residence was in France, in the way they were made in his wills, with an interval of ten years between them, would, upon the authority of adjudged cases, be sufficient to establish, *prima facie*, his domicile in France. They have been received in the courts of France, in the courts of England, and in those of our own country." Cases cited.

Ennis vs. Smith, 14 Howard, 422, 423.

12. Kosciusko's domicile of origin was Lithuania, in Poland. The presumption of law is that it was retained, unless the change is proved, and the burden of proving it is upon him who alleges the change. * * But what amount of proof is necessary to change a domicile of origin into a *prima facie* domicile of choice? It is residence elsewhere, or where a person lives out of the domicile of origin. That repels the presumption of its continuance, and casts upon him who denies the domicile of choice the burden of disproving it. Where a person lives is taken *prima facie* to be his domicile until other facts establish the contrary. It is difficult to lay down any rule under which every instance of residence could be brought which may make a domicile of choice. But there must be, to constitute it, actual residence in the place,

with the intention that it is to be a principal and permanent residence. That intention may be inferred from the circumstances or condition in which a person may be as to the domicile of his origin, or from the seat of his fortune, his family, and pursuits of life. A removal which does not contemplate an absence from the former domicile for an indefinite and uncertain time is not a change of it. But when there is a removal, unless it can be shown, or inferred from circumstances, that it was for some particular purpose expected to be only of a temporary nature, or in the exercise of some particular profession, office, or calling, it does change the domicile.

Ib.

13. The result is that the place of residence is *prima facie* the domicile, unless there be some motive for that residence not inconsistent with a clearly-established intention to retain a permanent residence in another place.

Ib.

14. The property of a commercial house, established in the enemy's country, is subject to seizure and condemnation as prize, though some of the partners may have a neutral domicile.

The Cheshire, 3 Wallace, 231.

15. Neutral friends, or even citizens who remain in the country of the enemy, after the declaration of war, have impressed upon them so much the character of enemies that trading with them becomes illegal, and all property so acquired is liable to confiscation.

The William Bagaley, 5 Wallace, 377, [405.]

16. The duty of a citizen, when war breaks out, if it be a foreign war, and he is abroad, is to return without delay; and if it be a civil war, and he is a resident in the rebellious section, he should leave it as soon as practicable.

Ib.

17. Domicile in the law of prize becomes an important consideration, because every person is to be considered in such proceedings as belonging to that country where he has his domicile, whatever may be his native or adopted country.

Ib.

18. The question of enemy or friend depends upon the domicile.

The Ann Green, 1 Gallison, 274.

The Joseph, Ib., 545.

The Francis, Ib., 614, [618.]

19. If a party put himself *in itinere* to return to his native country, he is already deemed to have assumed his native character.

The St. Lawrence, 1 Gallison, 467.

The Francis, Ib. 614.

DOMESTICS.

See *Servants*.

DRAFTS.

See *Bills of Exchange*.

EIGHT-HOUR LAW.

1. The act of 1868, (15 Stat., 77; R. S., § 3738,) declaring that "eight hours shall constitute a day's work," left the subject of compensation to be regulated upon principles in force at the time of its passage. The President, by proclamation dated 19 May, 1869, (16 Stat., 1127,) directed that thereafter no reduction should be made in the wages of Government employes on account of the reduction in the hours of labor: *Held*, that persons serving the Government as laborers, workmen, and mechanics are not entitled to receive, for the period intervening between the date of the act and the date of the proclamation, the wages of a day of ten hours for working eight hours, the Government being under no obligation to pay more for the past because it has agreed to pay more for the future.

Reply to Secretary of War, 13 Op., 424, *Akerman*, (1871.)

2. The act of 1868, (15 Stat., 77; R. S., § 3738,) declaring that eight hours shall constitute a day's work for all laborers, workmen, and mechanics employed by or on behalf of the United States, does not apply to laborers, workmen, and mechanics employed by a contractor with the United States.

Stone-cutters at Richmond, 14 Op., 37, [45,] *Bristow*, acting, (1872.)

3. Section 2 of act 1872, (17 Stat., 134,) see proclamation May 11, 1872, (17 Stat., 955,) relating to the settlement of accounts for the services of laborers, workmen, and mechanics employed by the Government between 25th June, 1868, and 19th May, 1869, is to be liberally construed, and may be taken to include all persons thus employed and paid by the day, although they may not come within the description of "laborers, workmen, and mechanics," regarding these words in their more strict signification.

Reply to Secretary of War, 14 Op., 123, *Hill*, acting, (1872.)

ENEMY.

See *Alien Enemy*.
Domicile.

1. Under the seventh section of the act of 1799, (1 Stat., 716, repealed, see R. S., § 4652,) France was to be deemed an enemy of the United States in March, 1799. The meaning of the word enemy discussed.

Bas vs. Tingy, 4 Dallas, 37, 39.

ENEMY PROPERTY.

1. Enemy property found in the United States, on land, at the commencement of hostilities, cannot be condemned without a legislative act authorizing its confiscation. An act declaring war is not such an act.

Brown vs. United States, 8 Cranch, 110.

2. An island conquered and occupied by the enemy is, for belligerent and commercial purposes, his soil. The produce of that soil is liable to condemnation while it belongs to the individual proprietor of the soil which produced it, although he is a neutral.

Thirty Hogsheads of Sugar vs. Boyle, 9 Cranch, 191.

3. The rules that neutral bottoms make neutral goods, and that enemy's bottoms make enemy's goods, are not only separable in their nature, but have been generally separated, and they are held by the United States to be distinct.

The Nereide, 9 Cranch, 388.

4. Consequently, a stipulation for the former rule, in a treaty, does not silently introduce the latter.

Id.

5. The fact that Spain administers the latter rule, as against neutrals, does not authorize this court to retaliate upon Spanish subjects a like departure from the law of nations without legislation directing it.

Id.

6. A neutral may lawfully ship his goods on board an armed belligerent vessel, and if her force is used in a combat, in which he gives no aid, his goods are not affected.

Id.

7. Goods, the property of merchants actually domiciled in the enemy's country at the breaking out of the war, are subject to capture and confiscation as prize.

The Mary and Susan, 1 Wheaton, 46.

8. It is a principle of the law of nations that a neutral cargo found on board an armed enemy's vessel is not liable to condemnation as prize of war.

The Atalanta, 3 *Wheaton*, 409

9. The property of a house of trade, established in the enemy's country, is condemnable as prize, whatever may be the personal domicile of the partners.

The Freundschaft, 4 *Wheaton*, 105

10. In general, the circumstance of goods being found on board an enemy's ship raises a legal presumption that they are enemy's property.

The London Packet, 5 *Wheaton*, 132.

11. The property of a commercial house established in the enemy's country is subject to seizure and condemnation as prize, though some of the partners may have a neutral domicile.

The Cheshire, 3 *Wallace*, 231.

12. Neutrals who place their vessels under belligerent control, and engage them in belligerent trade, or permit them to be sent with contraband cargoes, under cover of false destination, to neutral ports, while the real destination is to belligerent ports, impress upon them the character of the belligerents in whose service they are employed, and the vessel may be seized and condemned as enemy property.

The Hart, 3 *Wallace*, 559.

13. The liability of property, the product of an enemy country, and coming from it during war, is irrespective of the *status domicilii*, guilt or innocence of the owner. If it come from enemy territory, it bears the impress of enemy's property. If it belong to a loyal citizen of the country of the captors, it is nevertheless as much liable to condemnation as if owned by a citizen or subject of the hostile country, or by the hostile government itself.

The Gray Jacket, 5 *Wallace*, 342.

14. The only qualification of these rules is, that where, upon the breaking out of hostilities, or as soon after as possible, the owner escapes with such property as he can take with him, or in good faith thus early removes his property, with the view of putting it beyond the dominion of the hostile power, the property in such cases is exempt from the liability which would otherwise attend it.

Id.

15. Personal property left in a hostile country by an owner who abandons such country in order to go to the other belligerent, and so to return to his proper allegiance and soil, becomes, unless an effort is made with promptitude to remove it from such country, impressed with its character, and as such liable to the consequences attaching to enemy's property.

The William Bagaley, 5 *Wallace*, 377.

16. The presumption of the law of nations is against an owner who suffers such property to continue in the hostile country for much length of time.

Ib.

17. A contract made by a consul of a neutral power with the citizen of a belligerent State, that he will "protect," with his neutral name, from capture by the belligerent, merchandise which such citizen has in the enemy's lines, is against public policy and void.

Coppell vs. Hall, 7 Wallace, 542.

18. A shipment made by an enemy shipper to his correspondent in America, to belong to the latter at his election, in twenty-four hours after the arrival thereof, is liable to condemnation as hostile property.

The ship Francis and cargo, 1 Gallison, 445.

19. In war, property cannot change its hostile character *in transitu*.

In the above case, an election made during the transit will not merge the hostile character of the property.

Ib.

20. A ship is deemed to belong to the country where the owners reside. Courts of prize look to the legal interest in the ship, and will not recognize neutral equitable interests.

The San José Indiano, 2 Gallison, 263.

21. What is enemy's property is a judicial question.

The Amy Warwick, 2 Sprague, 123.

ENEMY'S LICENSE.

See *Illicit Intercourse*.

ENLISTMENTS.

See *Foreign Enlistments*.

ESTATES.

See *Consular Officers*.
Foreign Decedents.

EXCHANGE.

See *Bills of Exchange*.
Seamen.

EXECUTIVE AUTHORITY.*See Blockade.**Executive Interference.*

1. Where a legislative act of New South Wales provides that certain proceedings may be had in the courts as to the seamen of any foreign country deserting in that colony, provided the government of such foreign country assents, *held*, that such assent on the part of the United States cannot be given by the President, but can only be given by treaty or act of Congress.

Seamen's act of New South Wales, 6 Op., 209, Cushing, (1853.)

2. In a matter which the law confides to the pure discretion of the executive, the decision by the President or proper head of department, of any question of fact involved, is conclusive, and is not subject to revision by any other authority in the United States.

*Bayley's complaint, 6 Op., 226, Cushing, (1853.)***EXECUTIVE DEPARTMENTS.**

1. It is a rule which each administration has prescribed to itself, to consider the acts of its predecessors conclusive so far as the executive is concerned.

The right of review, 2 Op., 8 Wirt, (1825.)

2. An Executive Department has authority to appoint commissioners and agents to make investigations required by acts or resolutions of Congress; but it cannot pay them, except from an appropriation for that purpose.

Question of appointments, 4 Op., 248, Nelson, (1843.)

3. Although it may have been a rule of an Executive Department to construe an act of Congress relating to claims, in a particular manner, yet when Congress has afterward expressed an opinion in conflict with that of the office, such action of Congress has been considered as in the nature of a legislative interpretation, which becoming courtesy to the legislative department requires the executive to observe.

Case of representative of John M. Galt, 5 Op., 83, [84,] Johnson, (1849.)

4. The decision of the head of a Department, directing payment of a particular claim, is binding upon all the subordinate officers by whom the same is to be audited and passed. This doctrine has been recognized from the organization of the Government, is necessary to its proper operations, and is warranted by law.

H. Lasell's case, 5 Op., 87, Johnson, (1849.)

5. It is not competent for the Secretary of the Treasury to review the decisions of a predecessor on claims or accounts, except where mistakes have occurred in matters of fact, and where material new evidence has been discovered.

Power of Secretary of Treasury, 5 Op., 664, Crittenden, (1852.)

6. The duties of the clerks in an Executive Department are assigned to them by the head of the Department, except where they are specifically designated in particular cases by statute; and no posterior claim to extra compensation can be founded on the official acts done by a clerk, provided those acts constituted any part of the lawful duties of the Department.

Stubbs's case, 6 Op., 583, Cushing, (1854.)

7. As a general rule the direction of the President is to be presumed in all instructions issuing from the competent Department.

Relation of President to Executive Departments, 7 Op., 453, Cushing, (1855.)

8. Official instructions, issued by the heads of the several Executive Departments, civil and military, within their respective jurisdictions, are valid and lawful, without containing express reference to the direction of the President.

Ib.

9. Heads of Departments or of bureaus and other certifying-officers of the Government cannot certify by delegation, unless when specially authorized so to do by act of Congress.

Certification by delegation, 7 Op., 594, Cushing, (1855.)

10. A statute which merely authorizes the payment of a sum of money by one of the heads of Department is not mandatory in fact or in amount.

Appropriation act, P. O. Department, 8 Op., 39, Cushing, (1856.)

11. In all cases of plain and obvious conflict between the provisions of the Constitution and the provisions of a statute, not only the Judiciary Department, but every Department of the Government required to act upon the subject-matter, must determine what the law is, and obey the Constitution.

Power of Departments over rejected claims, 10 Op., 56, Bates, (1861.)

12. It is within the power of the head of an Executive Department to allow a claim which has been rejected by one of his predecessors, without new evidence. But the decision of the head of a Department ought only to be reversed on clear evidence of mistake or wrong.

Ib.

13. The heads of Departments have a rightful authority to direct allowances to be made, or to reject claims for allowances, in settling and

adjusting accounts relating to the business of their respective Departments, and such directions ought to be conformed to by the accounting-officers.

Authority of heads of Departments, 10 Op., 435, [441,] *Bates*, (1863.)

14. The cases defined in which the head of a Department is authorized to re-open the final decision of a predecessor.

Chorpenning's case, 12 Op., 355, *Stanbery*, (1868.)

15. Where the Postmaster-General is authorized and required by act of Congress to adjust a particular claim, nothing but a new authority, emanating from Congress, will enable one of his successors to open his adjustment, upon the ground that he adopted an erroneous basis of settlement.

Id.

16. The fact that, since the settlement, the committees of the two houses recommended by reports a different basis of settlement will not authorize a re-opening of the case.

It seems that the President would have no power, in such a case, to order the re-opening of the claim.

Id.

17. Clerks in the Executive Departments are officers, and required to take the oath prescribed by the act of 1862. (12 Stat., 502; R. S., § 1756.)

Oaths of clerks in Departments, 12 Op., 521, *Evarts*, (1868.)

18. A decision made by a former head of Department, after having heard the parties in interest, and after careful and thorough consideration of the case—there being no allegation that any material fact can be shown which was not before him—should be regarded by his successor as final, and be left undisturbed.

Case of Western Pacific Railroad Company, 13 Op., 387, *Akerman*, (1871.)

19. The principle that the final decision of a matter before the head of a Department is binding upon his successor in the same Department, under certain well-defined exceptions, has been so frequently declared that it is now entitled to be regarded as a settled rule of administrative law.

Case of R. H. McGoon, 13 Op., 456, *Bristow*, acting, (1871.)

20. Semble that whenever the law makes it the duty of an officer to examine, adjust, and settle claims against the Government, authority is impliedly given to him to require such claims to be supported by the oaths of witnesses, where the facts necessary to establish them rest on testimony.

Major Anderson's case, 14 Op., 419, *Williams*, (1874.)

21. The act of 1871 (16 Stat., 412; R. S., § 184) assumes the existence of authority in the heads of Departments and bureaus to require oaths in cases of claims against the Government, and provides them with a very efficient means for enforcing it.

Ib.

22. The President acts, in many cases, through the heads of Departments; and the Secretary of War, having directed a section of land to be reserved for military purposes, the court presumed it to have been done by the direction of the President, and held it to be, by law, his act.

Wilcox vs. Jackson, 13 Peters, 498.

23. The head of a Department has no right to review the decision of his predecessor, allowing a credit, except to correct some error of calculation. If he is of opinion that the allowance was wrongful, he must have a suit brought.

United States vs. Bank of Metropolis, 15 Peters, 377.

24. The head of a Department is the regular constitutional organ of the President for the administration of the affairs of the Department over which he presides, and rules and orders publicly promulgated through him must be received as acts of the Executive, and, as such, be binding upon all within the sphere of his legal and constitutional authority.

United States vs. Eliason, 16 Peters, 291, [302.]

25. A public officer is not liable to an action for an honest mistake made in a matter where he was obliged to exercise his judgment, though an individual may suffer from his mistake.

Kendall vs. Stokes, 3 Howard, 87.

26. It is the duty of the head of a Department to see that contracts which belong to his office are properly and faithfully executed, whether he made the contracts himself or conferred authority on others to make them; and if he becomes satisfied that contracts which he has made are being fraudulently executed, or that those made by others were made in disregard of the rights of the Government, or with the intent to defraud it, or are being unfaithfully executed, it is his duty to interpose, arrest the execution, and adopt effectual measures to protect the Government against the dishonesty of subordinates.

United States vs. Adams, 7 Wallace, 463.

27. When a statute authorizes an inferior public officer to make a sale "with the approval" of his superior, that approval is an indispensable condition to the validity of the sale, and must appear in writing; without its so appearing, he cannot make a good title which a purchaser is bound to accept.

United States vs. Jonas, 19 Wallace, 598.

28. A regulation of the Treasury Department, made in pursuance of an act of Congress, becomes a part of the law, and is of the same force as if incorporated in the body of the act itself.

United States vs. Barrows, 1 *Abbott*, U. S. R., 351.

29. The records of an Executive Department need not be produced in evidence in court, but their contents may be shown by authenticated copies.

Nock's case, 2 *C. Cls.*, 451.

EXECUTIVE INTERFERENCE.

1. In a suit brought against a consul-general of France, for transactions of a public nature, in which he acted as the commercial agent of his country, the President has no constitutional right to interfere, but must leave the matter to the tribunals of justice.

Letombe's case, 1 *Op.*, 77 *Lee*, (1797.)

2. A person acting under a commission from the sovereign of a foreign nation is not amenable for what he does in pursuance of his commission to any judicial tribunal in the United States.

Sinclair's case, 1 *Op.*, 81, *Lee*, (1797.)

3. Yet, according to the Constitution and laws of the United States, the Executive cannot interpose in judicial proceedings between an individual and the commissioner, whose controversy is entitled to a trial according to law.

Ib.

4. The Executive will not interfere with the judiciary, while it is in the regular course of giving construction to the acts of Congress, by directing a *nolle prosequi* of a proceeding against British vessel for a breach of the navigation act of April 18, 1818, after the district court has condemned her to forfeiture.

The Pitt, 1 *Op.*, 366, *Wirt*, (1820.)

5. Where it is claimed by a foreign minister that a seizure made by an American vessel was a violation of the sovereignty of his government, and he satisfies the President of the fact, the latter may, where there is a suit depending for the seizure, cause the Attorney General to file a suggestion of the fact in the cause, in order that it may be disclosed to the court.

La Jeune Eugénie, 1 *Op.*, 504, *Wirt*, (1821.)

6. Where an American vessel has brought off a slave from the Cape Verde Islands, the Executive will not interfere, further than to direct the district attorney to inquire into the facts, and to institute a prosecution if they warrant it.

Case of Antonio Soares Timas, 4 *Op.*, 269, *Nelson*, (1843.)

7. Under the treaty with Spain of 1819 (Pub. Trs., 716) and the act of 1829, (4 Stat., 359, R. S., § 5280,) the apprehension and delivery of a seaman who is alleged to be a deserter from a Spanish ship is a judicial act, and the State Department cannot change what a judge has done.

Manuel Castro's case, 9 Op., 96, Black, (1857.)

8. When the courts have acquired jurisdiction of cases of maritime capture, the political department of the Government should postpone the consideration of questions concerning reclamations and indemnities until the judiciary has finally performed its functions in these cases.

Captures on the Rio Grande, 11 Op., 117, Bates, (1864.)

9. When a court of the United States, in the exercise of its discretion, has advisedly determined to permit a vessel, libeled for violation of the neutrality laws, to be released on bond, the executive Department has no power or duty to interfere with the proceedings.

The Meteor, 12 Op., 2, Stanbery, (1866.)

EXPATRIATION.

See Foreign Tribunals.

1. The opinion of a British judge directing a plaintiff who had been a British subject, but who had taken the oath of allegiance to the Government of the United States, to be nonsuited on the ground that the contract which forms the subject-matter of the suit was unlawful between British subjects, and regarding the plaintiff as such, is founded on the ancient and standing laws of Great Britain, which can be altered only by the legislative power of that nation.

Green's case, 1 Op., 53, Bradford, (1794.)

2. Citizens of the United States possess the right of voluntary expatriation, subject to such limitations, in the interest of the State, as the law of nations or the acts of Congress may impose. (See R. S., § 1999.) The question examined at length in connection with the legislation of the different States on the subject.

Right of Expatriation, 8 Op., 139, Cushing, (1856.)

3. Any citizen of the United States, native or naturalized, may remove from the country and change his allegiance, provided this be done in time of peace, and for a purpose not directly injurious to the interests of this Government.

Antner's case, 9 Op., 62, Black, (1857.)

4. If he emigrates, carries his family and effects along with him, manifests his intention not to return, takes up his residence abroad, and assumes the obligation of a subject to a foreign government, this implies a dissolution of his previous relations with the United States, and no other evidence of that fact is required by our laws.
Ib.
5. A native of Bavaria naturalized in America, may return to his native country, and assume his political *status* as a subject of the King of Bavaria, if there be no law there to forbid it.
Ib.
6. The Bavarian government may require him to adjure his allegiance to the United States in such form as they may choose to prescribe, since we, on our part, make our own regulations for the admission of Bavarian subjects as citizens of the United States.
Ib.
7. The natural right of every free person, who owes no debt and is not guilty of any crime, to leave the country of his birth, in good faith and for an honest purpose—the privilege of throwing off his natural allegiance and substituting another allegiance in its place—is incontestable.
Christian Ernst's case, 9 Op., 356 Black, (1859.)
8. Our knowledge of international law is not taken from the municipal code of England, but from natural reason and justice, from writers of known wisdom, and from the practice of civilized nations; and they are all opposed to the doctrine of perpetual allegiance.
Ib.
9. In the United States, ever since our independence, we have upheld and maintained the right of expatriation by every form of words and acts, and upon the faith of the pledge which we have given to it, millions of persons have staked their most important interests.
Ib.
10. Expatriation includes not only emigration, but also naturalization, which signifies the act of adopting a foreigner and clothing him with all the privileges of a native citizen or subject.
Ib.
11. A foreign government cannot justify the arrest of a former subject who was naturalized in the United States by showing that he emigrated contrary to the laws of his native country.
Ib.
12. By Article I of treaty of 1870, between the United States and Austria, (Pub. Trs., 33,) the right of an American citizen to change his nationality and become a subject of Austria is recognized, on compliance with the provisions of the treaty.

Heinrich's case, 14 Op., 154, Williams, (1872.)

13. A doubt might be suggested whether political burdens, such as military service, could rightfully be imposed by Austria upon a person who is by birth a citizen of this country, but who is residing in Austria, and is, by having been born of Austrian parents temporarily residing here, also an Austrian subject, without the consent of that person, or without his signifying, by some act or declaration, his will to be a citizen of that country.

Ib.

14. But where a person at different times obtained Austrian passports, traveled as an Austrian subject, and resided many years in the country, he will be considered an Austrian, on the ground that consent, together with the laws of that country, has effected a change in his nationality.

Ib.

15. The declaration in the act of 1868, (15 Stat., 223; R. S., § 1999,) that the right of expatriation is "a natural and inherent right of all people," comprehends our own citizens as well as those of other countries; and where a citizen of the United States emigrates to a foreign country, and there, in the mode provided by its laws, formally renounces his American citizenship, with a view to become a citizen or subject of such country, this should be regarded by our Government as an act of expatriation.

Reply to President's Questions, 14 Op., 295, Williams, (1873.)

16. The selection and actual enjoyment of a foreign *domicile*, with an intent not to return, would not alone constitute expatriation; but where, in addition thereto, there are other acts done by him which import a renunciation of his former citizenship, and a voluntary assumption of the duties of a citizen of the country of his domicile, these, together with the former, might be treated as presumptively amounting to expatriation, even without proof of naturalization abroad; though the latter is undoubtedly the highest evidence of expatriation.

Ib.

17. A native-born citizen of the United States, who has been naturalized in a foreign country, and thus became a citizen or subject thereof, is to be regarded as an alien; and he cannot re-acquire American nationality, except in conformity to the laws of the United States providing for the admission of aliens to citizenship therein.

Ib.

18. The American citizen who goes into a foreign country, although he owes local and temporary allegiance to that country, is yet, if he performs no other act changing his condition, entitled to the protection of his own Government; and if, without the violation of any municipal law, he should be oppressed unjustly, he would have a

right to claim that protection, and the interposition of the American Government in his favor would be considered as a justifiable interposition. But his situation is completely changed where, by his own act, he has made himself the subject of a foreign power. Although this act may not be sufficient to rescue him from punishment for any crime committed against the United States—a point not intended to be decided—yet it certainly places him out of the protection of the United States while within the territory of the sovereign to whom he has sworn allegiance.

Murray vs. The Schooner Charming Betsy, 2 Cranch, 64, [120.]

19. Whether a right of expatriation exists under our Constitution and laws considered. If it does, not only a renunciation of citizenship of the United States, but actual removal, for some lawful purpose, and the acquisition of a domicile elsewhere, are necessary to effect it.

Albot vs. Janson, 3 Dallas, 133.

20. If a native American can expatriate himself, he divests himself, by the very act of expatriation, as well of the obligations as of the rights of a citizen. He becomes, *ipso facto*, an alien; his lands are escheatable, and the rights appertaining to citizenship, once lost, cannot be recovered by residence, but he must go through the formula prescribed by law for the naturalization of an alien born.

The Santissima Trinidad, 1 Brockenbrough, 478.

EXTERRITORIALITY.

See *Habeas Corpus*.

1. A writ of *habeas corpus* may be awarded to bring up an American subject unlawfully detained on board a foreign ship-of-war; the commander being fully within the reach of, and amenable to, the usual jurisdiction of the state where he happens to be.

Case of an American citizen on British ship, 1 Op., 47, Bradford, (1794.)

2. A British naval officer is on the same footing with every other foreigner who is not a public minister, as to privilege from arrest and suit.

Captain Cochran's case, 1 Op., 49, Bradford, (1794.)

3. It is lawful to serve either criminal or civil process upon a person on board of a British man-of-war lying within our territory.

The Chesterfield, 1 Op., 87, Lee, (1799.)

[See, however, 7 Op., 122, and 8 Op., 73, as bearing on the principle above stated.]

4. A ship entering the port of a friendly power, with slaves on board, would not, according to the law of nations in analogous cases, be responsible, on that account, to the local authorities, so long as those slaves continued on board.

Case of the Creole, 4 Op., 98, Legaré, (1842.)

5. In the case of a compulsory entry into a foreign port, under an overruling necessity, the enforcement of the municipal law of the nation having jurisdiction of that port, to the subversion of the authorities and rights guaranteed by its own country, is not in any respect justifiable.

Ib.

6. If a vessel be compelled, by an overruling necessity, to take refuge in the ports of another country, she is not subject to the municipal law of that country, so far as concerns any penalty, prohibition, tax, or incapacity, that would otherwise be incurred: Provided, she do nothing further to violate the municipal law during her stay.

Ib.

7. Some of the persons entitled to exterritoriality enumerated.

Celebration of marriages, 7 Op., 18, [20,] Cushing, (1854.)

8. A foreign ship of war, or any prize of hers in command of a public officer, possesses, in the ports of the United States, the rights of exterritoriality, and is not subject to the local jurisdiction.

The President and Prize, 7 Op., 122, Cushing, (1855.)

9. A prisoner of war on board a foreign man-of-war, or of her prize, cannot be released by *habeas corpus* issuing from courts either of the United States or of a particular State.

Ib.

10. But if such prisoner of war be taken on shore, he becomes subject to the local jurisdiction or not, according as it may be agreed between the political authorities of the belligerent and neutral power.

Ib.

11. The exterritoriality of foreign consuls in Turkey and other Mohammedan countries is entirely independent of the fact of diplomatic representation, and is maintained by the difference of law and religion; being but incidental to the fact of the established exterritoriality of Christians in all countries not Christian.

Functions of consuls, 7 Op., 342, Cushing, (1855.)

12. In virtue of the treaty between the United States and China of 1844, (Pub. Trs., 116, 121,) all citizens of the United States in China enjoy complete rights of exterritoriality, and are answerable to no authority but that of the United States. The whole subject examined.

Judicial authority in China, 7 Op., 495, Cushing, (1855.)

13. Citizens of the United States, in common with all other foreign Christians, enjoy the privileges of exterritoriality in Turkey, including Egypt; the same in the Turkish regencies of Tripoli and Tunis; and also in the independent Arabic states of Morocco and Muscat.

Status of Americans in Turkey, 7 Op., 565, Cushing, (1855.)

14. Ships of war enjoy the full rights of exterritoriality in foreign ports and territorial waters.

The Atalanta, 8 Op., 73, Cushing, (1856.)

15. Merchant-ships are a part of the territory of their country, and are so treated on the high seas, and partially, but not wholly so, while in the territorial waters of a foreign country.

Ib.

16. Crimes committed on board ship on the high seas are triable in the country to which she belongs.

Ib.

17. In port, the local authority has jurisdiction of acts committed on board of a foreign merchant-ship while in port, provided those acts affect the peace of the port, but not otherwise; and its jurisdiction does not extend to acts internal to the ship, or occurring on the high seas.

Ib.

18. The authority of the ship's country in these cases is not taken away by the fact that the actors are foreigners, provided they be of the crew or passengers of the ship.

Ib.

19. The local authority has right to enter on board a foreign merchant-man in port for the purpose of inquiry universally, but for the purpose of arrest only in matters within its ascertained jurisdiction.

Ib.

20. Full and absolute territorial jurisdiction being alike the attribute of every sovereign, and being incapable of conferring extra territorial power, would not seem to contemplate foreign sovereigns nor their sovereign rights as its objects. One sovereign being in no respect amenable to another, and being bound by obligations of the highest character not to degrade the dignity of his nation by placing himself or its sovereign rights within the jurisdiction of another, can be supposed to enter a foreign territory only under an express license, or in the confidence that the immunities belonging to his independent sovereign station, though not expressly stipulated, are reserved by implication, and will be extended to him.

Schooner Exchange vs. McFaddon, 7 Cranch, 116, [137.]

21. This perfect equality and absolute independence of sovereigns, and this common interest impelling them to mutual intercourse, and an interchange of good offices with each other, have given rise to a class of cases in which every sovereign is understood to waive the exercise of a part of that complete, exclusive territorial jurisdiction, which has been stated to be the attribute of every nation.

First. One of these is admitted to be the exemption of the person of the sovereign from arrest or detention within a foreign territory.

Second. A second case, standing in the same principles with the first, is the immunity which all civilized nations allow to foreign ministers.

Third. A third case, in which a sovereign is understood to cede a portion of his territorial jurisdiction, is where he allows the troops of a foreign prince to pass through his dominions.

Id.

22. If there be no prohibition, the ports of a friendly nation are considered as open to the public ships of all powers with whom it is at peace, and they are supposed to enter such ports, and to remain in them while allowed to remain, under the protection of the government of the place.

The implied license, under which such vessel enters a friendly port, may reasonably be construed, and, it seems to the court, ought to be construed, as containing an exemption from the jurisdiction of the sovereign, within whose territory she claims the rights of hospitality.

Id.

23. It seems to be a principle of public law that national ships of war, entering the ports of a friendly power open for their reception, are to be considered as exempted, by the consent of that power, from its jurisdiction.

Without doubt the sovereign of the place is capable of destroying this implication.

Id.

24. The cases of the *Cassius*, 3 Dallas, 121, and the *Invincible*, 1 Wheaton, 238, decide that neither a public vessel of another nation, nor its officers, are liable to answer in our courts for a capture on the high seas, but do not touch the question of jurisdiction over her prizes lying in our ports, which extends to libels *in rem* for restitution of such prizes made in violation of our neutrality.

The Santissima Trinidad, 7 Wheaton, 283.

25. A foreign public vessel is exempted from the jurisdiction of our courts, by an exception grounded on common usage and public policy; but this exception does not extend to her prizes, or captured goods landed here, which are liable to the jurisdiction of our courts for the purpose of inquiry and restitution, if a case for it is made.

Id.

EXTRA COMPENSATION.

See Compensation.

EXTRADITION.

1. The issue of a warrant under article 9, of the consular convention with France, of 1788, (Pub. Trs., 222, annulled by act of 1798; 1 Stat., 578,) is within the discretion of the district judge, and such discretion cannot be interfered with by the Supreme Court.

Case of Henry Barré, 1 Op., 55, Bradford, (1795.)

2. If a demand were formally made that a Spanish subject or our own citizens, heinous offenders within the dominion of Spain, should be delivered up to that government for trial and punishment; it would be the international duty of the United States to comply, yet in the absence of a law directing the mode of proceeding, there seems to be no way of effecting the delivery.

William Jones's case, 1 Op., 68, Lee, (1797.)

3. A requisition from the British minister is not authorized by the 27th article of the treaty of 1794, (Pub. Trs., 281,) unless the persons demanded are charged with murder or forgery committed within the territorial jurisdiction of Great Britain.

Case of Brigstook and others, 1 Op., 83, Lee, (1798.)

4. There is nothing in the law of nations, as explained by the usage and practice of the most respectable of them, which imposes upon us any obligation to deliver to Great Britain a master and six seamen of a British vessel who had feloniously carried away the vessel and cargo.

Sullivan's case, 1 Op., 509, [521,] Wirt, (1821.)

5. Even if, by the law and usage of nations, the obligation existed to deliver persons charged with crime, and were a perfect obligation, and the proof of the guilt of the accused satisfied the requisitions of that law, still the President has no power to make the delivery. The Constitution, and the treaties and acts of Congress made

under its authority, comprise the whole of the President's powers. A treaty or an act of Congress might clothe him with the power to arrest and deliver up fugitive criminals from abroad, and it is, perhaps, to be desired that such a power existed.

Ib.

6. The President has no power to order the delivery of diamonds and precious stones of the Princess of Orange, referred to in the note of Chevalier Huygens.

Chevalier Huygens's application, 2 Op., 452, Taney, (1831.)

7. Nor will he be justified in directing the surrender of the person upon whom a part of the stolen articles may have been found, as there is no stipulation between the two governments for the mutual delivery of fugitives from justice.

Ib.

8. The Executive is not authorized to deliver up to the King of Portugal two seamen confined in Boston, who are charged by the chargé d'affaires of His Majesty with piracy, committed on the brig *Triumph*. There is no law of Congress which authorizes the President to deliver up any one found in the United States who is charged with having committed a crime against a foreign nation; and we have no treaty stipulations with Portugal for the delivery of offenders.

Case of two Portuguese seamen, 2 Op., 559, Taney, (1833.)

9. Without the consent of Congress, no State can enter into any agreement or compact, express or implied, to deliver up fugitives from the justice of a foreign state who may be found within its limits.

Dewitt's case, 3 Op., 661, Legaré, (1841.)

10. According to the practice of the Executive Departments, the President is not deemed to be authorized to order the delivery of fugitives from justice in the absence of any express provision by treaty.

Ib.

11. A fugitive from the justice of Great Britain, charged with the commission of the crime of murder in Scotland, apprehended in the United States, and examined before a commissioner, and by him certified to be probably guilty on the evidence adduced, should be delivered up to justice, if the evidence upon which the application is founded be such as, according to the laws of the place where the fugitive shall be found, would justify his or her apprehension and commitment for trial if the crime had there been committed.

Christiana Cochrane's case, 4 Op., 201, Nelson, (1843.)

12. The mode of procedure in such cases is the preferment of a complaint to a judge or magistrate, setting out the offense charged

on oath, whereupon the judge or magistrate may issue a warrant for the apprehension of the person accused. Upon the accused being brought before the judge or magistrate, the latter should hear and consider the evidence of criminality; and if on such hearing the evidence be deemed sufficient to sustain the charge, the same should be certified to the executive authority, that a warrant may issue for the surrender.

Ib.

13. A commissioner for the United States, appointed by the circuit court, is a magistrate within the meaning of the law and of the treaty of Washington, and as such has power to apprehend, examine, and certify as to fugitives from justice.

Ib.

14. A requisition for a fugitive is not necessary to a preliminary examination upon which the evidence of criminality is to be heard and considered, but with a view only to the surrender, after the ascertainment of the facts showing the party charged to be in a condition which justifies the apprehension and commitment for trial according to the laws of the place where he or she shall be found. (Pub. Trs., 320.)

Ib.

15. The executive will not issue his warrant for the surrender of fugitives, under the tenth article of the Treaty of 1842 with Great Britain, (Pub. Trs., 320,) where the case does not certify the fact that an offense within the terms of the treaty has been committed, nor that there is such evidence of criminality as, according to the laws of the place where the alleged fugitives have been found, would justify their apprehension and commitment for trial if the crime had been there committed, nor that any complaint has been made to any magistrate of the United States, by whom such evidence had been heard.

Extradition under Treaty of Washington, 4 Op., 240, Nelson, (1843.)

16. The mode provided for the surrender of persons accused of the crimes mentioned in article 1, of the treaty with France, (Pub. Trs., 247,) is by requisitions made in the name of the respective parties through the medium of their respective diplomatic agents.

Extradition under Treaty with France, 4 Op., 330, Nelson, (1844.)

17. The surrender will be made only when the fact of the commission of the crime shall be so established that, according to the laws of the country in which the fugitive, or the person so accused, shall be found, his or her apprehension and commitment for trial would be justified if the crime had been there committed. The rule of evidence is prescribed in the treaty.

Ib.

18. The international extradition of fugitives from justice is a duty of comity, not of strict right.

Wing's case, 6 *Op.*, 85, *Cushing*, (1853.)

19. It is the settled policy of the United States not to make such extradition, except in virtue of express stipulations to that effect. Hence the United States ought not to ask for extradition in any case as an act of mere comity.

Ib.

20. Larceny is not included in the causes for extradition stipulated in the treaty between Great Britain and the United States of 1842, (Pub. Trs., 320.)

Ib.

[For an exhaustive consideration of the right to surrender fugitive criminals in the absence of treaty provision see

Short's case, 10 *Sergeant & Rawle*, 125.]

21. The opinion of the Supreme Court of the United States in *Kaine's case*, (14 Howard, 103,) considered in relation to the action of the President. Any foreign government entitled by treaty to the extradition of a fugitive from justice may apply to the courts in the first instance; but, if requested, the President will issue the previous authorization held to be necessary by a portion of the court in *Kaine's case*.

William Calder's case, 6 *Op.*, 91, *Cushing*, (1853.)

22. On a party being arrested and brought before a magistrate, that magistrate examines the case judicially; and his decision is not subject to any direction on the part of the President. Hence the question of remanding the prisoner for further examination, and the time of remanding, are questions for the magistrate to determine.

Ib.

23. The alleged fugitive may be arrested a second time on a new complaint, either with or without a new warrant of the President.

Ib.

24. The question of the general power of the magistrate to remand discussed.

Ib.

25. Engagements of extradition, whether of fugitives from justice or from service, stand in each case on particular stipulations of treaty, and are not to be inferred from the "favored nation" clause in treaties.

Case of a deserter from the Danish ship Saga, 6 *Op.*, 148, *Cushing*, (1853.)

26. In granting his mandate at the request of a foreign government for the purpose of commencing proceedings in extradition, the President does not need such evidence of the criminality of the party accused as would justify an order of extradition; but only *prima facie* evidence.

Extradition, 6 Op., 217, Cushing, (1853.)

27. Where a court of one of the states assumes to take by *habeas corpus* out of the hands of the marshal of the United States a person held by him as a fugitive from foreign justice, and under reclamation by treaty, the United States should authorize the marshal to call in aid the services of the district attorney.

Heilbronn's case, 6 Op., 227, Cushing, (1853.)

28. Where a person, claimed as a fugitive from foreign justice, is under examination before a commissioner of the United States, it is not in the lawful power of a State court to revise the case on *habeas corpus* and assume to overrule the commissioner.

Heilbronn's case, 6 Op., 237, Cushing, (1853.)

29. It is the right of the marshal of the United States to refuse to have the body of the party before the State court, and it is the duty of the courts and other authorities of the United States to protect the marshal in such refusal by all means known to the laws.

Id.

30. When a commissioner of the United States has made return according to law as to an alleged fugitive from justice, that he is lawfully subject to extradition, it is the duty of the Secretary of State to order the final writ of extradition, notwithstanding any contradictory proceedings of the courts of a State.

Heilbronn's case, 6 Op., 270, Cushing, (1854.)

31. Where a marshal of the United States has in custody a fugitive from foreign justice, under a warrant of extradition from the proper authorities of the United States, and a State court undertakes to usurp jurisdiction of the case, the marshal may, disregarding any process of the State court, take the party to the exterior line of such State, and there deliver him to the agent of the foreign government.

Heilbronn's case, 6 Op., 290, Cushing, (1854.)

32. The United States will not make demand for extradition of a person alleged to be a fugitive from the justice of one of the United States, and to have taken refuge in Great Britain, except on the exhibition of a judicial "warrant" duly issued, on sufficient proofs, by the local authority of the State in which the crime is alleged.

Wm. Brown's case, 6 Op., 425, Cushing, (1854.)

33. Evidence of the forging of checks on the communal chest of Breslau, in Prussia, is sufficient cause for the issue of a warrant for judicial inquiry, with a view to the extradition of the party, under the treaty between the United States and Prussia of 1852. (Pub. Trs., 660.)

Richard Sachs's case, 6 Op., 761, Cushing, (1854.)

34. A mere notification by the local officer of a foreign government of the escape of an alleged criminal is not sufficient *prima facie* evidence of a case, to justify the preliminary action of the President.

Maria Theresa Gerl's case, 7 Op., 6, Cushing, (1854.)

35. All demands of international extradition must emanate from the supreme political authority of the demanding state.

Ib.

36. A foreign *mandat d'arrêt*, setting forth the offense of a fugitive from the justice of a foreign country, within the terms of any treaty of extradition, such *mandat* coming through the proper political channel, is sufficient foundation for the issue of the President's warrant authorizing the institution of proceedings before the judicial authorities of the United States.

Sucillon's case, 7 Op., 235, Cushing, (1855.)

37. By the treaty of 1842 between the United States and Great Britain, (Pub. Trs., 315,) the expense attending the proceedings in extradition is to be borne by the government making the reclamation. But where, in consequence of conflict between the judicial authorities of the United States and those of a State, the latter aiming to prevent the extradition, the United States intervenes to maintain its own dignity in the premises, the special expenses of such intervention should be defrayed by the United States.

Heilbronn's case, 7 Op., 396, Cushing, (1855.)

38. Emigrants and exiles for cause of political difference at home are entitled to asylum in this country, but not malefactors; on the contrary, the foreign government which reclaims its fugitive malefactors is serviceable to us by ridding us of the intrusive presence of crime.

Sucillon's case, 7 Op., 536, Cushing, (1855.)

39. Hence, when reclamation of a fugitive from justice is made under treaty stipulation by any foreign government, it is the duty of the United States to aid in relieving the case of any technical difficulties which may be interposed to defeat the ends of public justice, the object to be accomplished being alike interesting to both governments, namely, the punishment of malefactors, who are the common enemies of all society.

Ib.

40. The ordinary expenses, including fees of counsel, attending the process of international extradition, are to be defrayed by the demanding government.

Sucillon's case, 7 *Op.*, 612, *Cushing*, (1855.)

41. Extradition cannot be demanded of France by the United States in the case of a breach of trust in the State of California made grand larceny by the laws of that State.

Case of embezzlement, 7 *Op.*, 643, *Cushing*, (1856.)

42. The term "public officers" in the treaty of 1843 between the United States and France, (Pub. Trs., 247,) or, as it stands in the French copy, "*dépositaires publics*," signifies officers or depositaries of the Government only, and does not comprehend officers of a railroad company, notwithstanding the latter was authorized and subventioned by the French government.

Request of Comte de Sartiges, 8 *Op.*, 106, *Cushing*, (1856.)

43. To justify the commencement of process in extradition, it must appear that the criminal acts charged were committed within the territorial jurisdiction of the demanding government.

David's case, 8 *Op.*, 215, *Cushing*, (1856.)

44. Any competent magistrate may take jurisdiction of a question of international extradition voluntarily; that is, without the previous application of the foreign government, or issue of the preparatory letters permissive of the President.

Wetherwax's case, 8 *Op.*, 240, *Cushing*, (1856.)

[The question arose, however, under the treaty of 1842 with Great Britain.]

45. There can be no actual extradition without proper requisition to that effect, addressed by the foreign government to the Secretary of State.

Ib.

46. Although extradition cannot be ordered by the President on mere judicial documents, but requires executive requisition, still, it may be effected, in the absence of any diplomatic minister of the demanding government, through other intermediate agencies, recognized by the law of nations.

Ib.

47. An alleged criminal is subject to extradition, notwithstanding that he may have come to this country otherwise than as an apparent fugitive on account of the particular crime; for the treaties apply not only to persons seeking an asylum here professedly, but to such as may be found in the country.

David's case, 8 *Op.*, 306, *Cushing*, (1857.)

48. It is the duty of the United States to provide a place of imprisonment for persons detained for extradition at the instance of foreign governments.

Sundry French subjects, 8 Op., 396, *Cushing*, (1857.)

49. A clerical error in letters missive, authorizing a foreign government to institute proceedings of extradition in the United States, is of no account, such a document not being a judicial paper in any sense, but only a political commission or license.

Charpentier's case, 8 Op., 420, *Cushing*, (1857.)

50. The laws with reference to extradition do not require the proceedings against a foreign criminal or a deserting seaman to be either carried on, or approved, by the attorney of the United States for the proper district.

Duties of district attorneys, 9 Op., 246, *Black*, (1858.)

51. In the case of the extradition of a fugitive from justice, the act of 1848, (9 Stat., 302; R. S., § 5270,) does not require or authorize the issuing of a warrant by the State Department until the facts of the case are judicially ascertained and certified.

Tyler's case, 9 Op., 379, *Black*, (1859.)

52. Attorneys of the United States in the several districts are not obliged by any act of Congress to appear on the part of foreign governments claiming the extradition of fugitives, and if the minister or agent of an accusing foreign government needs legal advice, or desires to have a case presented to the judicial authorities through the medium of a professional lawyer, he may select whom he pleases for that purpose.

Costs in extradition cases, 9 Op., 497, *Black*, (1860.)

53. By the extradition treaty between the United States and Prussia of 1852, (Pub. Trs. 660,) the expenses of the apprehension and delivery of a fugitive must be defrayed by the party who makes the requisition and receives the fugitive. Under that treaty, a commissioner or marshal may lawfully demand such fees as are usual for analogous services rendered to the United States.

Ib.

54. In a case of extradition of a fugitive from the justice of a foreign country, the judge or magistrate acts under special authority conferred by the treaties and acts of Congress, and as no appeal from his decision is given by the law under which he acts, no right of appeal by either party exists.

Case of Trangott Muller, 10 Op., 501, *Coffey ad int.*, (1863.)

55. A discharge by a district judge of a person apprehended as a fugitive from justice does not preclude, in a proper case, his re-arrest under the warrant of another judge, with a view to a re-examination of the case.

Ib.

56. A certificate under the act of 1860 (12 Stat., 84; R. S., § 5271) should show upon its face that the officer who made it is the principal diplomatic or consular officer of the United States resident in the country making the demand of extradition, and should declare that the documents to which it is attached are legally authenticated, according to the laws of the country from which the fugitive escaped, so as to entitle them to be received as evidence for similar purposes by the tribunals of that country.

Ib.

57. Robbery on the lakes is piracy within the meaning of our extradition treaty with Great Britain of 1842, (Pub. Trs., 320,) but inasmuch as the parties engaged in the outrages on Lake Erie were guilty of robbery and assault with intent to commit murder, the Secretary of State was advised, in view of the disputed question of piracy on the lakes, that their extradition should be demanded at the hands of the Canadian authorities for those offenses.

Lake Erie pirates, 11 *Op.*, 114, *Bates*, (1864.)

58. Where a warrant was issued by the State Department for the extradition of a fugitive from foreign justice, who was then in the custody of the marshal, and such fugitive was afterwards discharged from custody under section 4 of the act of 1848, (9 Stat., 302; R. S., § 5273,) in consequence of delay in appointing an agent to receive the prisoner, the latter cannot be again arrested under the same warrant of extradition.

Vance's case, 12 *Op.*, 75, *Stanbery*, (1866.)

59. A warrant of extradition issued by the State Department is not a warrant of arrest, and cannot be used for the purpose of arrest.

Ib.

60. Under the extradition treaty with France of 1843 (Pub. Trs., 247) a public officer of the United States who embezzles moneys of the United States intrusted to his care, and escapes from justice to the territory of France, is liable to be returned to this country for trial; such crime being here punishable with infamous punishment.

Gilson's case, 12 *Op.*, 326, *Stanbery*, (1867.)

61. A crime committed by a Prussian subject in Belgium, although justiciable in Prussia, according to Prussian law, does not fall within the provision of the treaty between the United States and Prussia, of 1852, (Pub. Trs., 660,) for the delivering up of persons, who, being charged with certain crimes "committed within the jurisdiction of either party," shall be found within the territories of the other.

Carl Vogt's case, 14 *Op.*, 281, *Williams*, (1873.)

This opinion is in direct conflict with the opinion of Blatchford, J., in the same case.

In re Stupp, 11 *Blatchford*, 124.

62. Where a fugitive is extradited under the treaty of 1842 between Great Britain and the United States, (Pub. Trs., 320,) and where the surrender is effected pursuant to the British act of 1870, the provisions of the act of 1870 have no bearing whatever upon the rights or duties of the government under the treaty.

Lawrence's case, — *Op.*, *Phillips*, acting, July, 1875.

63. The treaty of 1842 does not forbid the trial of a fugitive delivered under it for an offense other than that for which he was surrendered.

The practice and decisions in the United States, the decisions in Canada, and the understanding of the executive and judicial authorities of Great Britain have all agreed in considering that fugitives when surrendered to justice are surrendered absolutely, and that a prisoner so surrendered is subject to trial for offenses other than the particular offense for which he was surrendered.

Ib.

64. The statute of 1869 (15 Stat., 337, R. S., § 5275) in no respect limits the right of the Government as to trials of surrendered criminals.

Ib.

[NOTE.—This opinion was prepared at the outset of the questions which arose with Great Britain with reference to the cases of Lawrence and Winslow. Upon the point that a surrendered criminal may, in the absence of any prohibition in the treaty, be tried for offenses other than those for which he was surrendered, see, also, *United States v. Caldwell*, (*post*), 8 *Blatchford*, 131; *United States vs. Lawrence*, (*post*), U. S. C. C. So. Dist. N. Y., *Benedict*, J., March, 1876; *Adrianse v. Lagrave*, 59 N. Y. R., 110. And in Canada, *Paxton's case*, 10 *Low. Can. Rep.*, 212, 11, 352; *Von Aernam's case*, *Up. Can. Rep.*, 4 C. P., 288; *in re Israel Rosenbaum*, *Supreme Ct. Canada*, 1874. See, also, *Ex. Doc. H. R.*, 173., 44 Cong., 1 sess.]

65. George Holmes was arrested in the State of Vermont on a warrant or order of the governor of the State, addressed to a sheriff, stating that an indictment had been found against him for murder in Canada, and that as it was fit and expedient that he should be made amenable to the laws of the country, commanding the sheriff to convey him to the border between Canada and Vermont, and deliver him to the Canadian authorities.

A *habeas corpus* was issued by the supreme court, and the prisoner was remanded, and a writ of error taken to the Supreme Court of the United States.

The court being equally divided as to the question of jurisdiction, the writ of error was dismissed.

66. The court, however, considered at length the question of the authority of the governor of the State of Vermont to surrender a fugitive criminal, and Chief-Justice Taney, in his opinion, in which Justices Story, McLean, and Wayne concurred, stated, as the conclusion of the majority on this point—

“Upon the whole, therefore, my three brothers and myself, after a most careful and deliberate examination, are of opinion that the power to surrender fugitives, who, having committed offenses in a foreign country, have fled to this for shelter, belongs, under the Constitution of the United States, exclusively to the Federal Government, and that the authority exercised in this instance by the governor of Vermont is repugnant to the Constitution of the United States.”

Ib., 579.

NOTE.—After this opinion Holmes was discharged by the supreme court of Vermont on *habeas corpus*. A similar question arose in New York in 1874, Governor Dix having ordered the surrender of Carl Vogt, alias Stupp, after a refusal by the President to surrender him to Germany, as the offense was committed out of her territory, or to Belgium, in the absence of treaty provisions. The court unanimously agreed in discharging the prisoner, on the ground that the governor had no power to make the surrender. *The People, Barlow vs. Curtis*, 50 N. Y. R., 321.

67. Where one was imprisoned under a warrant from a district judge of the United States to abide the order of the President in respect of making extradition of him as fugitive from justice under the convention with France of 1843, (Pub. Trs., 247,) it was held that the Supreme Court had not jurisdiction to issue a writ of *habeas corpus* to inquire into the cause of his commitment.

In the matter of Metzger, 5 Howard, 176.

68. On June 14, 1852, a complaint on oath was presented to a commissioner of the United States by the British consul at New York, charging that Thomas Kaine had committed a murder in Ireland, that a warrant had been issued for his apprehension in Ireland, that he was in the United States; and requesting his apprehension for extradition under the treaty of 1842.

After an arrest and examination, the commissioner ordered him to be committed for extradition, to abide the order of the President, and he was held in custody by the marshal. A writ of *habeas corpus* issued from the circuit court, which was dismissed. Application was made to the Supreme Court for a writ of *habeas corpus*. On this application, four of the judges held that the writ should be refused on the merits.

The Chief-Justice and two of the judges held that no proceed-

ings under the treaty could be entertained without a requisition made on the President, and his authority obtained for that purpose; and that a United States commissioner was not an officer within the treaty or acts of Congress to hear and determine the question of criminality; and one justice held that the court had no jurisdiction to grant the writ asked, but did not express an opinion on the merits.

In re Kaine, 14 *Howard*, 103.

The prisoner was afterward brought before Mr. Justice Nelson at chambers, and discharged. *Ex parte Kaine*, 3 *Blatchford*, 1.

69. Thomas Nash, alias Robins, was charged with having committed murder on board the *Hermione*, a British war-vessel, on the high seas; requisition was made by the British minister for the delivery of the offender under the twenty-seventh article of the treaty of 1794. (*Pub. Trs.*, 281.) The district judge of South Carolina, before whom the prisoner was brought by *habeas corpus*, made an order, as is stated, at the particular request of the President of the United States, that, as there was sufficient evidence of criminality to justify the apprehension and commitment for trial of the prisoner, he be delivered over by the marshal of the court to the British consul under the twenty-seventh article of the treaty.

Bee's Adm. Rep., 267.

NOTE.—This was the celebrated case of Robins, who claimed to have been an impressed American seaman. This surrender gave rise to attacks upon President Adams, and the speech of Mr. Marshall, afterward Chief-Justice, is attached as a note to the above report. (See *Wharton's State Trials*, 392-456.)

70. Where a shot had been fired from an American vessel in the harbor of a foreign port, killing a person on board a foreign vessel lying in the port, and the prisoner was acquitted on account of want of jurisdiction of the case: *Held*, that it was not the duty of the court, there being no treaty stipulations with the foreign country to send back the offender to the foreign government, whose laws he had violated, that he might be tried.

United States vs. Davis, 2 *Sumner*, 482.

71. Where a portion of a British crew were charged with piracy committed on board a British vessel, contrary to acts of Parliament, not being piracy under the law of nations, and were imprisoned under a warrant issued from the Secretary of State at the request of the British minister, under the treaty of 1842: (1) *Held*, that the prisoners might be arrested and surrendered without any special act of Congress to carry the treaty into effect; (2) that

without legislation as to the means of enforcing the treaty the prisoners might be examined and, if probably guilty, be ordered into custody, with a view to surrender; (3) that the order of surrender might be signed by the Secretary of State and issued from the State Department. The general question of the right to surrender in the absence of legislation considered.

Case of the British prisoners, 1 Woodbury and Minot, 66.

72. A foreign government has no right, by the law of nations, to demand of the Government of the United States a surrender of a citizen or subject of such foreign country who has committed a crime in his own country, and is afterward found within the limits of the United States. It is a right which has no existence without, and can only be secured by, a treaty stipulation.

Case of José Ferretra dos Santos, 2 Brockenbrough, 493.

73. Under the treaty with Great Britain of 1842, (Pub. Trs., 320,) and the acts of Congress for carrying into effect its stipulations, no authority is required from the Executive Department of the United States to enable a judge, magistrate, or commissioner to issue a warrant for the arrest of an alleged fugitive from justice.

Ex parte Ross, 2 Bond, 252.

74. The circuit court has power on a writ of *habeas corpus*, in conjunction with a writ of *certiorari*, to revise the action of a commissioner in committing a fugitive for extradition.

In re Phillip Henrich, 5 Blatchford, 414.

75. Where a crime is forgery the complaint may charge more than one forgery.

Ib.

76. The effect of the act of June 22, 1860, (12 Stat., 84; R. S., § 5271,) upon evidence in extradition cases discussed.

Ib.

The following cases seem opposed to the first proposition decided in this case: *In re Veremaitre*, 9 N. Y. Legal Obs., 137; *In re Kaine*, 10 N. Y. Legal Obs., 257; *In re Heilbronn*, 12 N. Y. Legal Obs., 65; *Ex parte Van Aernam*, 3 Blatchford, C. C. R., 160.

Section 5271 is now amended by act of June 19, 1876, chapter 133, laws 1876.

77. A mandate for the apprehension of a fugitive from foreign justice, purporting to be issued by the Government of the United States, and issued under the hand of the Secretary of State and the seal of the Department of State, is a sufficient mandate.

In re François Farez, 7 Blatchford, 34.

78. In a complaint praying for the issue of a warrant it is not enough to charge an offense generally, but the offense charged should be clearly shown to be within the treaty. So that it is not enough to charge a forgery, but the time and place of the offense and the nature of the forgery must be set forth.
Ib.
79. A complaint before a commissioner in an extradition case, verified by the consul of a foreign government, in which he charges the offense properly, is sufficient, if made by him officially, although he does not make the averments on his personal knowledge of the facts.
In re François Farez, 7 Blatchford, 345.
80. It is not a necessary preliminary step to an investigation under an extradition treaty to show that a warrant was issued abroad against the offender, and, therefore, the complaint need not state that fact.
Ib.
81. Under the convention for extradition between the United States and Switzerland, (Pub. Trs., 748,) which provides for the delivery of persons charged with certain crimes "when these crimes are subject to infamous punishment," it is sufficient if the crime be subject to infamous punishment in the country where it was committed without its being also subject to infamous punishment in the country from which the extradition is demanded.
Ib.
82. Where depositions from abroad are put in evidence in an extradition case, under the act of 1860, (12 Stat., 84; R. S., § 5271,) where the charge is forgery, and it appears by them that the forged papers were produced before and deposed to by the witnesses giving the depositions, it is not necessary that the forged papers should be produced here before the commissioner.
Ib.
83. What is a sufficient certificate of authentication of papers under said act of 1860.
Ib.
84. Showing that forgery is punishable by imprisonment in the state prison by the laws of the canton of Berne, Switzerland, in which canton the crime was committed, is showing that it is subject to infamous punishment in the country where it was committed, within the meaning of the convention with Switzerland.
Ib.
85. On an investigation before a commissioner, sitting in the State of New York, in an extradition case under said convention, the

offender has a right to be examined as a witness in his own behalf.

What is sufficient evidence to warrant a commitment, with a view to extradition under said conventions.

Ib.

Above decision approved.

In re François Farez, 7 Blatchford, 491.

86. The defendant was indicted for bribing an officer. He pleaded that he was brought into the United States on a charge of forgery, under the extradition treaty of 1842, (Pub. Trs., 320,) and that bribery was not within the treaty. On demurrer to the plea: Held, that while abuse of extradition proceedings, or want of good faith, would be a cause of complaint between the two governments, such complaints cannot be investigated by the courts; and that the prisoner being within the jurisdiction of the court and charged with an offense, the court has jurisdiction to try him.

United States vs. Caldwell, 8 Blatchford, 131.

87. Where an executive mandate authorizing proceedings for extradition is a necessary prerequisite under any treaty, it is sufficient for it to describe the offense charged in the very terms of the treaty.

In re Macdonnell, 11 Blatchford, 79.

88. Whether a mandate from the executive department of the Government is a necessary prerequisite to proceedings for extradition.
Quære.

Ib.

89. It is not proper to resort to *habeas corpus* during the progress of proceedings before the commissioner, to review questions of evidence.

Ib.

90. The extradition convention of 1852 between the United States and Prussia, (Pub. Trs., 660,) for "the mutual delivery of criminals, fugitives from justice," in certain cases provides that the contracting parties shall, on requisition, deliver up to justice all persons who, being charged with the crimes therein specified, "committed within the jurisdiction of either party, shall seek an asylum or shall be found within the territories of the other." S., alleged to be a native of Prussia, and since his birth and still a subject of the King of Prussia, was arrested in the United States, for extradition to Prussia, charged with having committed at Brussels, in Belgium, "and within the legal jurisdiction of Prussia," crimes specified in said convention. It was alleged, inasmuch as such crimes were, at the time they were committed,

punishable by the laws of Belgium, that S., being, when they were committed, a subject of Prussia, was by the laws of Prussia subject to be punished for said crimes in Prussia; that a prosecution against him therefor had been commenced in Prussia, and a warrant of arrest had been issued against him by the proper judicial tribunal in Prussia having jurisdiction thereof; and that, immediately after committing the crimes he had fled from the justice of Belgium and Prussia. There was no extradition treaty between the United States and Belgium. Held, that the case was one within the said convention.

In re Joseph Stupp, 11 Blatchford, 124.

91. The provisions for extradition contained in the treaties and conventions for that purpose between the United States and foreign countries, considered as bearing on the meaning of the word "jurisdiction" used therein.

Out of seventeen of those treaties and conventions, which are now in force, all but one provide for the delivery of persons charged with crimes committed within the "jurisdiction" of one party, who shall seek an asylum within the "territories" of the other.

Ib.

92. The treaties between the United States and foreign countries, respecting the jurisdiction of the United States over crimes committed in those foreign countries, considered, as well as the laws of the United States passed in pursuance of the provisions of those treaties, and to carry them into effect, and the practical execution of those laws.

Ib.

93. The laws of the United States respecting the jurisdiction of the United States over crimes not committed within the physical territory of the United States, other than laws passed in pursuance of treaties, considered as showing an assumption by the United States of jurisdiction over offenses committed outside, not only of the physical territorial limits of the United States, but outside of the *quasi* territorial limits of the United States, such as on an American vessel on the high seas, and outside of territorial limits granted by treaty.

Ib.

[NOTE.—After this decision was made the examination in the matter before the commissioner was proceeded with, and resulted in commitment of the prisoner to await the issuing of a warrant for his surrender. The Secretary of State submitted the question involved to the consideration of the Attorney-General, who gave the opinion herein referred to, of 21 July, 1873, [see *ante*, paragraph 61,] and a warrant was refused. The prisoner not having been delivered up within two calendar months after his final commit-

ment, an application, under section 4 of act 12 August, 1848, (9 Stat., 302, R. S., § 5273,) was made to Judge Blatchford, on notice to the Secretary of State, to discharge the prisoner from custody, and he was discharged.]

94. While the relator was lawfully held in custody, under a valid warrant of arrest, in an extradition case, and the inquiry thereunder was being proceeded with, a second warrant, on a new complaint, for a distinct offense, for his extradition was issued. Afterward he was discharged from the arrest under the first warrant for want of sufficient evidence to justify his commitment, and he was hereafter arrested under the second warrant. Held, that the latter arrest was not invalid.

In re Macdonnell, 11 Blatchford, 170.

95. Under sec. 2 of the act of 1848, (9 Stat., 302, R. S., § 5271,) as supplemented by the act of 1860, (12 Stat., 84,) copies of depositions taken in London, before the lord mayor of London, and certified under his hand to be copies of the depositions on which he issued a warrant of arrest against the person charged, and further certified by the minister of the United States in Great Britain to be so authenticated as to entitle them to be received for similar purposes by the tribunals of Great Britain, are competent evidence in an inquiry, under a warrant of arrest, in an extradition case.

Id.

96. In cases where a treaty of extradition with a foreign country for the surrender of fugitives from justice does not require the issuing of an Executive mandate, as a prerequisite to the entertaining of proceedings, and the issuing of a warrant of arrest, by a magistrate, such mandate is not necessary.

In re Hermann Thomas, 12 Blatchford, 370.

97. The convention for extradition between the United States and Bavaria of 1853 (Pub. Trs., 42) was not abrogated by the operation of the constitution of the German Empire, adopted in 1871, as affecting the further independent existence of Bavaria.

Id.

98. It is not a necessary preliminary to an investigation here, under an extradition treaty, that a warrant of arrest should have been issued, or proceedings had against the accused, in the foreign jurisdiction.

Id.

99. Under the convention for the extradition of fugitives from justice, between the United States and Italy, of 1868, (Pub. Trs., 436,) a person may be surrendered for the crime of murder committed in Italy before the making of the convention.

In re Angelo de Giacomo, 12 Blatchford, 391.

100. The various extradition treaties between the United States and foreign countries examined, with a view of showing that some, on their face, exclude surrender for prior crimes, while others do not, and that prior crimes are included, where the language is capable of a construction including them, unless they are expressly excluded.

Ib.

101. A person who has committed a crime abroad, and come to the United States before the making of an extradition treaty providing for a surrender for such crime, has not thereby acquired a right of asylum of which he cannot be deprived.

Ib.

102. The restrictions in Article 4 and Article 5 of the amendments to the Constitution of the United States have no relation to the subject of extradition, as regulated by convention and by statute.

Ib.

103. Such convention, construed as covering the case of a crime committed before the treaty was made, is not open to the objection that it is a bill of attainder, or an *ex post facto* law, within the meaning of Art. I, section 9, of the Constitution of the United States.

Ib.

104. After the commitment of an accused for extradition, and after a discharge on *habeas corpus* has been refused, the President may lawfully decline to issue a warrant of surrender, either because the offense charged is not embraced in the treaty, or because the evidence before the commissioner was insufficient; but no appeal or method of review is given to any court or judicial officer.

In re Joseph Stupp alias Vogt, 12 Blatchford, 501.

105. The provisions of the Revised Statutes with reference to the issue of writs of *habeas corpus* and *certiorari* examined.

Ib.

106. The provisions of the act of August 12, 1848, (9 Stat., 302,) and of June 22, 1860, (12 Stat., 84,) and of R. S., § 5271, as to documentary evidence in extradition cases, considered.

Ib.

[NOTE.—After the above decision, § 5271 was amended by the act of June 19, 1876. (Chap. 133, laws 1876.)]

107. The accused was charged with several forgeries, and pleaded that, having been surrendered for a single forgery under the British act of 1870, he could be tried for no other offense: Held, that extradition proceedings by their nature do not secure to the criminal surrendered immunity from prosecution for any offense other than that for which he was surrendered.

United States vs. Lawrence, U. S. C. C. So. Dist. N. Y., March, 1876.

108. Nor is such immunity given by the treaty of 1842 with Great Britain, nor by the construction placed by the two governments on that treaty, nor by the acts of Congress of 1848 and 1869, (R. S., §§ 5272-5275,) nor by the British extradition act of 1870.

Id.

EXTRA WAGES.

See Seamen.

"FAVORED NATIONS."

See Treaties.

1. Engagements of extradition, whether of fugitives from justice or from service, stand in each case on particular stipulations of treaty, and are not to be inferred from the "favored nation" clause in treaties.

Case of a deserter from the Danish ship Saga, 6 Op., 148, Cushing, (1853.)

FEEES.

See Consular Officers.

FLORIDA.

See Treaties—Spain.

1. The 6th article of the treaty of cession (Pub. Trs., 712) contains the following provision: "The inhabitants of the territories which his Catholic Majesty cedes to the United States by this treaty, shall be incorporated in the Union of the United States, as soon as may be consistent with the principles of the Federal Constitution, and admitted to the enjoyment of the privileges, rights, and immunities of the citizens of the United States." This treaty is the law of the land, and admits the inhabitants of Florida to the enjoyment of the privileges, rights, and immunities of the citizens of the United States. It is unnecessary to inquire whether this is not their condition, independent of stipulation. They do not, however, participate in political power; they do not share in the government till Florida shall become a State.

All the laws which were in force in Florida while a province of

Spain, those excepted which were political in their character, which concerned the relations between the people and their sovereign, remained in force until altered by the Government of the United States. Congress recognized this principle by using the words "laws of the Territory now in force therein." No laws could then have been in force but those enacted by the Spanish Government.

American Insurance Co. vs. Canter, 1 Peters, 542, [544.]

2. The legislation of the United States with reference to the acquisition of Florida considered.

Foster vs. Neilson, 2 Peters, 253.

United States vs. Arredondo, 6 Peters, 691.

United States vs. Clarke, 8 Peters, 436.

Mitchel vs. United States, 9 Peters, 711.

3. The act of Congress of June 22, 1860, had for its object the final adjustment of land-claims and to validate grants made by the Spanish government to bona-fide grantees of land within the disputed territory while that government remained in possession of the territory

United States vs. Lynde, 11 Wallace, 632, [644.]

FOREIGN CONSULS.

1. A riot before the house of a foreign consul by a tumultuous assembly, requiring him to give up certain persons supposed to be resident with him, and insulting him with improper language, is not an offense within the crimes act of April 30, 1790, (1 Stat., 117; R. S., § 4062,) and therefore the offender cannot be legally prosecuted in the courts of the United States.

Case of the British consul at Norfolk, 1 Op., 41, Bradford, (1794.)*

2. A consul is not privileged from legal process by the general laws of nations, nor is the French consul-general by the consular convention between the United States and France of 1788, (Pub. Trs., 219—annulled by act of 1798—1 Stat., 578.)

Letombe's case, 1 Op., 77, Lee, (1797.)

3. In a suit brought against a consul-general of France for transactions of a public nature, and in which he acted as the commercial agent of his country, the President of the United States has no constitutional right to interpose his authority, but must leave the matter to the tribunals of justice.

Id.

4. Foreign consuls are bound to appear only in the Federal courts; the Constitution and laws, contemplating the responsibility of consuls, having provided these tribunals, in exclusion of the State courts, in which they shall answer.

Villavaso's case, 1 Op., 406, Wirt, (1820.)

5. Foreign consuls and vice-consuls are not public ministers within the law of nations, or the acts of Congress, but are amenable to the civil jurisdiction of our courts; and in the case of the Genoese consul (2 Dallas, 297) it was held that they were not privileged from prosecutions for misdemeanors.

Ib.

6. The President cannot interfere in such a case, but where a privilege is claimed a plea may be entered to the jurisdiction of a State court, or, if in a national court, the consul may bring the question before the Supreme Court.

Ib.

7. The claim of the French envoy for the exercise of judicial power by the consul of his government in the port of Savannah is not warranted by subsisting treaties.

Claim of the French minister, 2 Op., 378, Berrien, (1830.)

8. The President cannot concede such jurisdiction on the rule of reciprocity.

Ib.

9. The principles of international law, as they are recognized in Europe, afford no warrant for the exercise of judicial powers by consuls, but the rights and duties of those functionaries depend, both for their authority and extent, upon the treaties subsisting between the governments exchanging this species of commercial agent.

Ib.

10. Foreign consuls are entitled to no immunities beyond those enjoyed by foreigners coming in a private capacity to this country, except that of being sued and prosecuted exclusively in the Federal courts. Whenever a foreign consul is guilty of illegal or improper conduct, he becomes liable to a revocation of his exequatur, and to be punished according to our laws, or he may be sent back to his own country, at the discretion of our Government.

Immunities of foreign consuls, 2 Op., 725, Butler, (1835.)

11. Foreign consuls are not exempted either by treaty or by law from the penal effect of the statute forbidding the enlistment of troops in the United States for the military service of a foreign country.

British consul's case, 7 Op., 367, Cushing, (1855.)

12. The estates of foreigners dying in the United States are settled by the local authorities.

Estates of foreign decedents, 8 Op., 98, Cushing, (1856.)

13. The consul of the decedent's country can intervene of right only by way of surveillance and without jurisdiction.

Ib.

14. Citizens of the United States who hold foreign consulates in the United States are not exempt from jury duty or service in the militia by the law of nations or by the Constitution and laws of the United States, nor unless exempted by the statutes of that State of the Union in which they may respectively reside.

Citizens—foreign consuls, 8 *Op.*, 169, *Cushing*, (1856.)

15. Foreign consuls have no right, on the trial of a person whose acts affect them as accomplices, to interpose by letter; but may appear as witnesses, or by counsel, in aid of the defense of the person indicted.

Rights of consuls, 8 *Op.*, 469, *Cushing*, (1855.)

16. No foreign power can, of right, institute or erect any court of judicature of any kind, within the jurisdiction of the United States, but such only as may be warranted by and be in pursuance of treaties. The admiralty jurisdiction, which has been exercised in the United States by consuls of France, not being so warranted, is not of right.

Glass vs. Sloop Betsey, 3 *Dallas*, 6, [16.]

17. A consul, though a public agent, is supposed to be clothed with authority only for commercial purposes. He has an undoubted right to interpose claims for the restitution of property belonging to subjects of his own country, but it is not competent for him, without the special authority of his government, to interpose a claim on account of the violation of the territorial jurisdiction of his country.

The Anne, 3 *Wheaton*, 435, [445.]

18. A vice-consul, duly recognized by our government, is a competent party to assert or defend the rights of property of individuals of his nation, in a court of admiralty.

The Bello Corrunes, 6 *Wheaton*, 168.

19. In the absence of specific powers from competent authority, he has not the right to receive, in his public character, the proceeds of property libeled.

Id.

20. On a writ of error to a State court, the record of which was understood to show that the character of consul-general of the King of Saxony did not exempt the defendant from being sued in the State court, the judgment was reversed.

Davis vs. Paokard, 7 *Peters*, 276.

21. This is not a mere personal privilege. It is a privilege of the foreign sovereign that his representative shall be sued only in the courts of the United States, with which Government alone he has relations; and it is not waived by an omission to plead it to the action.

Id.

22. A contract made by a consul of a neutral power, with the citizen of a belligerent State, that he will "protect" with his neutral name, from capture by the belligerent, merchandise which such citizen has in the enemy's lines, is against public policy, and void.

Coppell vs. Hall, 7 Wallace, 542.

23. No private person can interpose in a case of prize and make claim for the restoration of captured property on the ground that the capture was made in neutral waters.

Whatever claim is made must be presented by the neutral nation whose rights have been infringed. Even a consul, by virtue of his office merely, cannot interpose.

The Lilla, 2 Sprague, 177.

24. A consul of a foreign power, though not entitled to represent his sovereign in a country where the sovereign has an ambassador, is entitled to intervene for all subjects of that power interested.

Robson vs. The Huntress, 2 Wallace, jr., 59.

25. A consul is not entitled by the law of nations to the immunities and privileges of an ambassador or public minister. He is liable to civil suits, like any other individual, in the tribunals of the country in which he resides.

Gittings vs. Crawford, Taney's Dec., 1.

26. Article 10 of the treaty with Prussia of 1828 (Pub. Trs., 658) provides that the consuls, vice-consuls, and commercial agents of each party "shall have the right, as such, to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities," subject to the right of the contending parties "to resort, on their return, to the judicial authority of their country" and to the right of the consuls and commercial agents to require the assistance of the authorities "to cause their decisions to be carried into effect or supported." The crew of a Prussian vessel sued *in rem*, in admiralty, in the district court, to recover wages alleged to be due them. The master of the vessel answered, denying the debt, invoking the protection of said treaty, denying the jurisdiction of the court, and averring that the claim for wages had already been adjudicated by the Prussian consul at New York. The consul also protested formally to the court against the exercise of its jurisdiction. The case was tried in the district court, and it appeared that the consul had adjudicated on the claim for wages. The district court decreed in favor of the libellants. Held, that the district court had no jurisdiction of the case.

The Elwine Kreplin, 9 Blatchford, 438.

27. The district and circuit courts of the United States have jurisdiction of suits brought against foreign consuls.

Saint Luke's Hospital vs. Barclay, 3 Blatchford, 259.

Graham vs. Stucken, 4 Blatchford, 50.

Bixby vs. Janssen, 6 Blatchford, 315.

28. The State courts have no jurisdiction of suits against foreign consuls, but they may assume jurisdiction of suits commenced by them.

Sagory vs. Wisman, 2 Benedict, 240.

29. Where a foreign consul files a bill in equity in a State court, it seems the court may entertain a cross-bill.

Ib.

30. A foreign consul may be arrested in the circuit court, under the acts of February 28, 1839, (5 Stat., 321,) and January 14, 1841, (5 Stat., 410, R. S., § 990,) and the New York code of procedure, in a suit for money recovered by him in a fiduciary capacity.

McKay vs. Garcia, 6 Benedict, 556.

31. The pendency of a former suit in a State court is no defense to a second suit for the same cause of action in the Federal court, as the State court had no jurisdiction.

Ib.

FOREIGN DECEDENTS.

1. The estates of foreigners dying in the United States are settled by the local authorities. The consul of the decedent's country can intervene of right only by way of surveillance, and without jurisdiction.

Estates of foreign decedents, 8 Op., 98, Cushing, (1856.)

2. Under the treaty with Peru of 1851 (Pub. Trs., 612) the United States are not bound to pay a consul of the Peruvian government the value of property belonging to a deceased Peruvian, on whose estate the consul was entitled to administer, which may have been unjustly detained and administered by a local public administrator.

Verjel's case, 9 Op., 383, Black, (1859.)

FOREIGN DOMICILE.

See Domicile.

FOREIGN ENLISTMENTS.

1. The undertaking of a belligerent to enlist troops of land or sea in a neutral state without the previous consent of the latter is a hostile attack on its national sovereignty.

British consul's case, 7 Op., 367, Cushing, (1855.)

2. The act of Congress prohibiting foreign enlistments is a matter of domestic or municipal right as to which foreign governments have no right to inquire, the international offense being independent of the question of the existence of a prohibitory act of Congress.

Id.

3. A foreign minister who engages in the enlistment of troops here for his government is subject to be summarily expelled from the country; or, after demand of recall, dismissed by the President.

Id.

4. If agents of the British government, being instructed to enlist military recruits, succeed, by ingenious devices, in evading the municipal law, and so escape punishment as malefactors, such successful evasion serves to increase the intensity of the international wrong done the United States.

British enlistments, 8 Op., 468, Cushing, (1855)

5. Report to the President on the legal question involved in the enlistment of troops by British officers in the United States.

British enlistments, 8 Op., 476, Cushing, (1856.)

FOREIGN MINISTERS.

See *Public Minister.*

FOREIGN OFFICERS.

See *Executive Interference.*

Privilege from Arrest.

1. Foreign officers, not public ministers, are not privileged from arrest and suit in the United States.

Captain Cochran's case, 1 Op., 49, Bradford, (1794.)

Rosa's case, 1 Op., 68, Lee, (1797.)

FOREIGN SHIPS OF WAR.

See *Habeas Corpus.*

Exterritoriality.

International Law.

1. If foreign armed ships adopt the character of merchant ships, they must be subject to the consequences thereof, and be treated as merchant ships by our revenue-officers.

Case of collector at Norfolk, 1 Op., 337, Wirt, (1820.)

FOREIGN STATES.

1. Acts of hostility committed by American citizens in foreign countries must be dealt with there; the offense is not within the jurisdiction of the United States.

Attack on Sierra Leone, 1 Op., 57, *Bradford*, (1795.)

2. A collision having occurred in the harbor of San Francisco between the French transport "Euryale," and "The Sapphire," an American vessel, a libel was filed in the name of the Emperor Napoleon III for damages. Damages were decreed the libellant and an appeal taken. Held, that a foreign sovereign can bring a civil suit in the courts of the United States.

The Sapphire, 11 *Wallace*, 164.

3. A claim accruing to such sovereign, (such as an injury to a public ship of war,) is not defeated, nor does suit therefor abate by a change in the person of the sovereign. Such a change, if necessary, may be suggested on the record.

Ib.

4. The Constitution of the United States gives jurisdiction to the courts of the United States, in cases where foreign states are parties, and the judiciary act gives to the circuit courts jurisdiction in all cases between aliens and citizens.

The King of Spain vs. Oliver, 2 *Washington*, 429.

5. The court refused to inquire, upon a motion, whether Ferdinand VII, King of Spain, could institute this suit, the Government of the United States not having acknowledged him king.

Ib.

FOREIGN TERRITORY.

See Sovereignty.

FOREIGN TRIBUNALS.

See Expatriation.

1. A nation ought not to interfere in the causes of its citizens brought before foreign tribunals, except in a case of refusal of justice, or of palpable injustice.

Green's Case, 1 Op., 53 *Bradford*, (1794.)

2. When a suitor applies to foreign tribunals for justice, he must submit to the rules by which those tribunals are governed.

Ib.

FRANCE.

*See Extradition
Treaties.*

1. The modified state of war with France in 1799 considered.

Bas vs. Tingey, 4 Dallas, 37.

FREE GOODS.

- 1 By the treaty with Spain of 1795 (Pub. Trs., 708) free ships make free goods; but the form of the passport by which the freedom of the ship was to have been conclusively established, never having been annexed to the treaty, the proprietary interest of the ship is to be proved, according to the ordinary rules of the prize court, and if thus shown to be Spanish, will protect the cargo on board, to whomsoever the latter may belong.

The Amiable Isabella, 6 Wheaton, 1.

2. On the same subject see

The Pizarro, 2 Wheaton, 227.

United States vs. The Amistad, 15 Peters, 518.

FUGITIVES.

See Extradition.

GOVERNMENT.

See Civil War.

De Facto Government.

Sovereignty.

GOVERNMENT OFFICERS.

See Contracts.

Compensation.

Executive Departments.

GRANT.

1. This court has uniformly held that the term grant, in a treaty, comprehends not only those which are made in form, but also any concession, warrant, order, or permission to survey, possess, or settle, whether evidenced by writing or parol, or presumed from possession.

Strother vs. Lucas, 12 Peters, 436.

GUANO ISLANDS.

1. What facts must be established to justify the President in annexing a guano island to the United States. Manner of proceeding and form of bond discussed.

Guano Islands, 9 Op., 30, Black, (1857.)

2. The act of 1856 (11 Stat., 119; R. S., § 5570) requires, before an island whereon guano is discovered shall be deemed as appertaining to the United States, that the island shall be taken possession of and actually occupied; conditions which are not complied with by a mere symbolical possession or occupancy.

Case of Johnson's Islands, 9 Op., 364, Black, (1859.)

3. No claim, under the act, can have an earlier inception than the actual discovery of guano deposit, possession taken, and actual occupation of the island, rock, or key whereon it is found.

Ib.

4. In determining the proper party to give the bond required by the act, the political department of the Government can only look to the party complying with the conditions of the statute, without considering the legal or equitable rights of other parties to share in the profits of the speculation, which are to be left for the determination of the proper judicial tribunals.

Ib.

5. The President has no power to annex a guano island to the United States while a diplomatic question as to jurisdiction is pending between this Government and that of a foreign nation.

Cayo Verde Islands, 9 Op., 406, Black, (1859.)

6. The President has no duty to perform in respect to an application by the sureties in a bond given to the United States under the guano-island act of 1856 (11 Stat., 119; R. S., § 5574) to be released from their obligation, in consequence of a breach of the bond by their principal.

Case of Delano and Russell, 11 Op., 30, Bates, (1863.)

7. The Secretary of State ought not to revoke the proclamation issued August 7, 1860, relative to Howland's Island in the Pacific Ocean, in favor of the United States Guano Company, upon the application of the American Guano Company.

Application of American Guano Co., 11 Op., 397, Speed, (1865.)

8. Section 8 of the act of 1865 (13 Stat., 494) repeals that part of the act of 1856 (11 Stat., 119) which requires the trade in guano from guano islands to be carried on in coasting-vessels, and for two years from and after July 14, 1865, all persons who have complied with section 2 of the act of 1856 (R. S., §§ 5572, 5573) may export guano in any vessel which may lawfully export merchandise from the United States.

Exportation of guano, 11 Op., 514, Speed, (1866.)

9. Claim of the widow of William H. Parker, under the acts of 1856 (11 Stat., 119) and 1872, (17 Stat., 48; R. S., § 5570,) to certain guano islands in the Pacific Ocean, examined, and the conclusion reached: That the claimant has no derivative title to the islands under her late husband, and that she is not now in a situation to set up an original title thereto in herself.

Guano Islands in the Pacific, 14 Op., 608, Phillips, acting, (1873.)

HABEAS CORPUS.

1. A writ of *habeas corpus* may be awarded to bring up an American subject unlawfully detained on board a foreign ship of war; the commander being fully within the reach of and amenable to the usual jurisdiction of the state where he happens to be.

Case of an American citizen on British ship, 1 Op., 47, Bradford, (1794.)

[NOTE.—But see other opinions and cases under *Exterritoriality*.]

HIGH SEAS.

1. Discussion of jurisdiction over acts done on board of American vessels on the high seas.

The Atalanta, 8 Op., 73, Cushing, (1856.)

HOSTILITY.

See *Neutrality*.

ILLICIT INTERCOURSE.

1. Whenever there is just cause to believe that any merchant-vessel is engaged in an illicit trade, forbidden by the laws of Congress, a public vessel has the right to detain her until our Government can act upon the subject; and the question of the violation of the sovereignty of any foreign government in nowise affects the question in respect to the liability of the suspected vessel to seizure under such circumstances.

The brig Thomas, 3 Op., 405, Grundy, (1839.)

2. Although in this case it was competent for the consul to give the order and for the public vessel to make the seizure and detention, nevertheless, without further proof that the vessel was engaged or arranged to be engaged in the slave-trade, further proceedings should not be taken in the premises.

3. After a declaration of war an American citizen cannot lawfully send a vessel to the enemy's country to bring away his property. Intercourse, and not merely trading, is forbidden.

The Rapid, 8 Cranch, 155.

4. The sailing on a voyage under the license and passport of protection of the enemy, in furtherance of his views or interests, constitutes such an act of illegality as subjects the ship and cargo to confiscation as prize of war.

The Julia, 8 Cranch, 181.

5. The acceptance and use of an enemy's license on a voyage to a neutral port, prosecuted in furtherance of the enemy's avowed objects, is illegal, and subjects the vessel and cargo to confiscation.

The Aurora, 8 Cranch, 203.

6. It is not necessary, in order to subject the property to condemnation, that the person granting the license should be duly authorized to grant it, provided the person receiving it takes it with the expectation that it will protect his property from the enemy.

Ib.

7. Sailing with an intention to further the views of the enemy is sufficient to condemn the property, although that intention be frustrated by capture.

Ib.

8. The principle of the decision in "*The Julia*" (8 Cranch, 181) applied to a case where it was not expressly stated in the license that its object was to supply the enemy with provisions, but where such object was plainly inferable.

The Hiram, 8 Cranch, 444.

9. A vessel of the United States which carries a cargo from a neutral to an enemy's port, after the existence of war was known, is liable to capture and condemnation, though such passage is a part of her home voyage from the neutral port to the United States, and the capture is made after she has sailed from the enemy's port.

The Joseph, 8 Cranch, 451.

10. If, upon the breaking out of a war with this country, our citizens have a right to withdraw their property from the enemy's country, it must be done within a reasonable time. Eleven months after the declaration of war is too late.

The Saint Lawrence, 9 Cranch, 120.

11. Navigating under a license from the enemy is cause for confiscation, and is closely connected in principle with the offense of trading with the enemy.

The Hiram, 1 Wheaton, 440.

12. The sailing under the enemy's license constitutes, of itself, an act of illegality, which subjects the property to confiscation, without regard to the object of the voyage or the port of destination.

The Ariadne, 2 *Wheaton*, 143.

13. A vessel and cargo liable to capture as enemys' property, or for sailing under the pass or license of the enemy, or for trading with the enemy, may be seized after arrival in a port of the United States and condemned as prize of war. The *delictum* is not purged by the termination of the voyage.

The Caledonian, 4 *Wheaton*, 100.

14. Any citizen may seize any property forfeited to the use of the government, either by the municipal law or as prize of war, in order to enforce the forfeiture, and it depends upon the Government whether it will act upon the seizure; if it proceeds to enforce the forfeiture by legal process, this is a sufficient confirmation of the seizure.

Ib.

15. It may be averred as a part of the law of nations—forming a part, too, of the municipal jurisprudence of every country—that in a state of war between two nations, declared by the authority in whom the municipal constitution vests the power of making war, the two nations and all their citizens or subjects are enemies to each other. The consequence of this state of hostility is, that all intercourse and communication between them is unlawful.

Jecker vs. Montgomery, 18 *Howard*, 110, [112.]

16. Cases mentioned, by way of illustration, in which property of a subject or citizen, found trading with an enemy, has been adjudged to be forfeited as prize.

Ib.

17. Neutral friends or even citizens who remain in the enemy's country after the declaration of war, have impressed upon them so much of the character of enemies, that trading with them becomes illegal, and all property so acquired is liable to confiscation.

The William Bagaley, 5 *Wallace*, 377, [405.]

18. It has been found necessary, as soon as war is commenced, that business intercourse should cease between the citizens of the respective parties engaged in it, and this necessity is so great that all writers on public law agree that it is unlawful, without any express declaration of the sovereign on the subject.

Intercourse during war with an enemy is unlawful to parties who stand in the relation of debtor and creditor as much as to those who do not.

United States vs. Grossmayer, 9 *Wallace*, 72, [74, 75.]

19. Every kind of commercial dealing or intercourse, whether by transmission of money or of goods, or orders for the delivery of either, between two countries at war, directly or indirectly, or through the intervention of third persons or partnerships, or by contracts in any form looking to or involving such transmission, is void.

Montgomery vs. United States, 15 *Wallace*, 395, [400.]

20. What constitutes trading with public enemy.

United States vs. Lapéne, 17 *Wallace*, 601.

21. The Government of the United States has clearly the power to permit limited commercial intercourse with an enemy in time of war, and to impose such conditions thereon as it sees fit. This power is incident to the power to declare war and carry it on to a successful termination.

Hamilton vs. Dillin, 21 *Wallace*, 73.

22. It seems that the President, who is constitutionally invested with the entire charge of hostile operations, may exercise this power, but there is no doubt that with the concurrent authority of Congress, he may exercise it at his discretion.

Ib.

23. It must be considered as a settled principle of maritime and national law, that all trade with the enemy, unless with the permission of the sovereign, is interdicted, and subjects the property engaged in it to the penalty of confiscation. Nor is this as a modern principle. It may not be found laid down in terms in Grotius, Puffendorf, or Vattel, but it irresistibly flows from the current of their reasoning. Indeed, the treatises of these great writers upon national law are admitted to be imperfect on many maritime questions.

The schooner Rapid and cargo, 1 *Gallison*, 295, [303.]

24. I lay it down as a fundamental proposition, that, strictly speaking, in war all intercourse between subjects and citizens of the belligerent countries is illegal, unless sanctioned by the authority of the government, or in the exercise of the rights of humanity. I am aware that the proposition is usually laid down in more restricted terms by elementary writers, and is confined to commercial intercourse. * * Independent of all authority, it would seem a necessary result of a state of war to suspend all negotiations and intercourse between the subjects of the belligerent nations.

The Julia and cargo, 1 *Gallison*, 594, [601.]

INDEFINITE APPROPRIATIONS.*See Appropriations.***INDEMNIFICATION.***See Awards.**Claims.**Diplomatic Interference.*

1. The indemnification awarded by the Emperor of Russia, to be paid by Great Britain for having violated the treaty of peace, in taking and carrying away slaves and other property, involves not merely the return of the value of the specific property, but a compensation also, for the subsequent and wrongful detention of it, in the nature of damages; and since this will be a work of great labor and time, interest accordingly may be taken as a necessary part of the indemnification awarded.

*Award of the Emperor of Russia, 2 Op., 28 Wirt, (1826.)***INJURIES.***See Claims.**Diplomatic Interference.**Slaves.**Treaties.*

1. By the law of nations, if the citizens of one State do an injury to the citizens of another, the government of the offending subject ought to take every reasonable measure to cause reparation to be made by the offender. But if the offender is subject to the ordinary processes of law, it is believed this principle does not generally extend to oblige the government to make satisfaction, in case of the inability of the offender.

*The Mercator, 1 Op., 106, Lincoln, (1802.)***INSURRECTION.**

1. The act of despatching an American vessel, in ballast, from a port of the United States with an immediate destination to a neutral port, and an ulterior destination, with cargo taken in at such neutral port, to a blockaded port, is an offense against the United States under section 2 of the act of 1862, (12 Stat., 590; R. S., § 5334.)

Case of blockade runners, 10 Op., 513, Coffey, ad int., (1863.)

2. The United States, in the enforcement of their constitutional rights against armed insurrection, have all the powers not only of a sovereign, but also of the most favored belligerent.

Lamar vs. Browne, 92 U. S. R., S. C., 187.

INTEREST.

1. In general, the government; which is always to be presumed to be ready and willing to discharge its obligations, pays no interest; yet from considerations of State policy, it has sometimes allowed it, as in the case of claims under the act of 1814, (6 Stat., 139.)

Claim of Henry de la Francia, 5 Op., 105, Johnson, (1849.)

2. Although interest, as a general rule, will not be paid upon claims against the Government, there are instances in which the Government, from considerations of policy allows it.

Claim of the heirs of Thomas Ewel, 5 Op., 138, Johnson, (1849.)

3. Cases in which interest on claims should be allowed.

Galphin's case, 5 Op., 227, Johnson, (1850.)

Transportation claims, 5 Op., 399, Crittenden, (1851.)

4. As a general rule, the United States does not pay interest on any debts of the Government.

Colmesnil's case, 7 Op., 523, Cushing, (1855.)

5. The only exceptions are where the Government stipulates to pay interest, as in public loans, and where interest is given by act of Congress expressly, either by the name of interest or by that of damages.

Ib.

6. Acts of Congress authorizing the settlement of claims according to "equity" or "equity and justice," do not give interest; for, as between private individuals, there is no material difference in this respect between equity and law, and that expression does not change the result as regards the government.

This opinion reviews former opinions on same subject.

Ib.

7. Semble, that the court does not sanction the allowance of interest on claims against the Government.

Gordon vs. United States, 7 Wallace, 188.

INTERNATIONAL COMITY.

See Claims.

INTERNATIONAL COMMISSIONERS.

1. According to the publiclaw of the monarchies of Europe, the authority of ministers, and perhaps of international commissioners, expires on the death, deposition, or abdication of the prince; but not so as between the American republics, in which the executive power

is permanent and continuous, without regard to the governing person, and there is no interruption of the authority or renewal of the credentials of their public ministers, on a change of President for whatever cause, provided such President continues to represent and exercise the appointing power of the Government.

Case of Commissioners under treaty with Mexico, 7 Op., 582, Cushing, (1855.)

2. The United States observe, as their rule of public law, to recognize governments *de facto*, and also governing persons *de facto*, without scrutiny of the question of legitimacy of origin or accession.

Ib.

INTERNATIONAL LAW.

1. The arrest of servants of public ministers is regulated by act of Congress; entering a public minister's house to serve an execution will either be absorbed in the arrest as being necessarily associated with it, or, if an arrest be admissible, must be punished, if at all, under the law of nations.

Case of Van Berckel's servant, 1 Op., 26, Randolph, (1792.)

2. Entering a public minister's residence to make an arrest which might lawfully be made elsewhere is an offense under the law of nations.

Ib.

3. The law of nations does not allow reprisals, except in case of violent injuries directed and supported by the State, and the denial of justice by all the tribunals, and afterward by the prince.

Pagan's case, 1 Op., 30, Randolph, (1793.)

4. To attack an enemy in a neutral territory is absolutely unlawful.

The arrest of a British vessel within the capes of the Delaware and before she went to sea is a seizure within our territory, and vessel should be restored.

The Grange, 1 Op., 32, Randolph, (1793.)

5. A foreign consul is not a public minister within the meaning of the act of April 30, 1790, (1 Stat., 117; R. S., § 4063,) because he is not in any degree invested with the representative character.

Case of British consul at Norfolk, 1 Op., 41, Bradford, (1794.)

6. The law of nations invests the commander of a foreign ship of war with no exemption from the jurisdiction of the country into which he comes.

A writ of *habeas corpus* may be awarded to produce an American citizen unlawfully detained on a foreign vessel.

Case of American citizen on British ship, 1 Op., 47, Bradford, (1794.)

7. In the case of a foreign public minister, the municipal law of libel is strengthened by the law of nations, which secures the minister a peculiar protection not only from violence, but also from insult. Such a publication may be made the subject of legal prosecution.

Case of British minister, 1 Op., 52, Bradford, (1794.)

8. A citizen of a neutral state who, for hire, serves as a mariner on a neutral ship, employed in contraband commerce, with either of the belligerents, is not liable to any prosecution or punishment for so doing by the municipal laws of his own state; nor is he punishable personally according to the law of nations, though taken in the act by that belligerent nation to whose detriment the prohibited trade would operate:

Sale of ships to the British, 1 Op., 61, Lee, (1796.)

9. It is an offense against the law of nations for any persons, whether citizens or foreigners, to go into the territory of Spain with intent to recover their property by their own strength, or in any other manner than that permitted by its laws.

William Jones's case, 1 Op., 68, Lee, (1797.)

10. A consul is not privileged from legal process by the general law of nations.

Letombe's case, 1 Op., 77, Lee, (1797.)

11. It is a rule established by the law of nations that a captured vessel must be brought within the jurisdiction of the country to which the captor belongs before any regular condemnation can be awarded.

British ship John, 1 Op., 78, Lee, (1797.)

12. According to the general rule established by the writers on the law of nations, every ship, even a public ship of war of a foreign nation, in a port of one of the States of the Union, adjacent to a wharf, is within the territory of such State and subject to the service of judicial process. It is lawful to serve either civil or criminal process upon a person on board a British man-of-war under such circumstances.

The Chesterfield, 1 Op., 87, Lee, (1799.)

13. By the law of nations, if the citizens of one state do an injury to the citizens of another, the government of the offending subject should take every reasonable measure to cause reparation to be made by the offender; but if the offender is subject to the ordinary processes of law, it is believed that the principle does not generally extend to oblige the government to make satisfaction in case of the inability of the offender.

The Mercator, 1 Op., 106, Lincoln, (1802.)

14. Foreign consuls and vice-consuls are not public ministers within the law of nations.

Villavaso's case, 1 *Op.*, 406, *Wirt*, (1820.)

15. According to the pure spirit of the law of nations, no nation gives herself a claim to call upon other nations for a strict observance of their law who does not observe it strictly upon her own part, not only in the particular class of cases in which she makes the call, but throughout the whole system of that law; for that law presents an entire system of the relative rights and duties of nations, founded throughout on the purest morality and the most expanded philanthropy, and every part of it is equally obligatory on all nations.

Sullivan's case, 1 *Op.*, 509, [511,] *Wirt*, (1821.)

16. There is nothing in the law of nations, as explained by the usage and practice of the most respectable among them, which imposes on us any obligation to deliver up fugitives from foreign justice.

Ib., [521.]

17. There is high authority for the position that a prize may be brought into a neutral port and sold without violating the law of nations concerning neutrality; but there is no doubt of the authority of the neutral sovereign to prohibit such sale, and as the strongest considerations of expediency and safety urge him to do so the better course is, clearly, to prohibit it.

Case of a Spanish ship, 2 *Op.*, 86, *Wirt*, (1823.)

18. It would be a breach of neutrality to permit a neutral port to be made a cruising-station for a belligerent or a place of depot for his spoils or prisoners.

Ib.

19. The principles of international law, as they are recognized in Europe, afford no warrant for the exercise of judicial power by consuls.

Claim of the French minister, 2 *Op.*, 378, [381,] *Berrien*, (1830.)

20. If a consul be guilty of illegal or improper conduct he is liable to have his exequatur revoked and to be punished according to the laws of the country in which he is consul, or he may be sent back to his own country, at the discretion of the government which he has offended.

Immunities of foreign consuls, 2 *Op.*, 725, *Butler*, (1835.)

21. A consul is not such a public minister as to be entitled to the privileges appertaining to that character, nor is he under the special protection of the law of nations. He is entitled to privileges to a certain extent, such as safe-conduct, but he is not entitled to

the *jus gentium*. It may be considered as settled law that consuls do not enjoy the protection of the law of nations any more than any other persons who enter the country under a safe-conduct.

Id.

22. Nothing can be clearer than that the voluntary enlistment of aliens is agreeable to the law of nations, which makes a part of the common law.

Enlistment of aliens, 3 *Op.*, 671, *Legaré*, (1841.)

23. A ship entering the port of a friendly power, with slaves on board, would not, according to the law of nations in analogous cases, be responsible on that account to the local authorities so long as those slaves continued on board. It may be conceded, in view of the English doctrine, that in this particular case ships voluntarily entering British ports, with a knowledge of the state of British law, may be taken to have voluntarily submitted to that law, (right or wrong,) as it is interpreted there.

Case of the Creole, 4 *Op.*, 98, *Legaré*, (1842.)

24. The persons and household goods of foreign ambassadors and of those attached to their legations are exempt from arrest, seizure, or molestation, as well by the law of nations as by the act of Congress of 1790, section 28. (1 Stat., 118; R. S., § 4062.) But it is not incumbent on the Secretary of State to interfere in such cases, since the act of Congress which prescribes the penalty refers the parties to the judiciary.

Case of Jules Marie, 5 *Op.*, 69, *Toucey*, (1849.)

25. There is no principle of the law of nations, no rule of comity between them, which forbids one nation to employ in her military service the subjects or citizens of a foreign nation.

Enlistment of aliens, 6 *Op.*, 474, [476,] *Cushing*, (1854.)

26. According to the law of nations, neutrals have the right to purchase during war the property of belligerents, whether ships or anything else; and any regulation of a particular state which contravenes this doctrine is against public law, and in mere derogation of the sovereign authority of all other independent states.

Letter of the British minister as to purchase of ships, 6 *Op.*, 638, *Cushing*, (1853.)

27. Some of the persons entitled by the law of nations to extraterritoriality enumerated.

Celebration of marriages, 7 *Op.*, 18, [20,] *Cushing*, (1854.)

28. By the law of nations the ships of war of belligerents, with their prizes, enjoy asylum in neutral ports for the purpose of obtaining supplies or undergoing repairs, according to the discretion of the neutral sovereign, who may refuse the asylum absolutely, or grant

it under such conditions of duration, place, and other circumstances, as he shall see fit: Provided, That he must be strictly impartial in this respect toward all the belligerent powers.

The President and prize, 7 Op., 122, Cushing, (1855.)

29. A foreign ship of war, or any prize of hers in command of a public officer, possesses, in the ports of the United States, the rights of extritoriality, and is not subject to the local jurisdiction.

Ib.

30. A prisoner of war on board a foreign ship of war, or of her prize, cannot be released by *habeas corpus* issuing from courts of the United States or of a particular State.

Ib.

31. But if such prisoner of war be taken on shore, he becomes subject to the local jurisdiction, or not, according as it may be agreed between the political authorities of the belligerent and neutral power.

Ib.

32. The law of nations as to territorial sovereignty discussed.

The bark Eliza and pilot, 7 Op., 229, Cushing, (1855.)

33. The act of Congress prohibiting foreign enlistments is a matter of domestic or municipal right, as to which foreign governments have no right to inquire, the international offense being independent of the question of the existence of a prohibitory act of Congress.

British consul's case, 7 Op., 367, [368,] Cushing, (1855.)

34. The rule of public law is that, since the right of raising soldiers is a right of majesty, which must not be violated by a foreign nation, it is not permitted to raise soldiers in the territory of a state without the consent of its sovereign.

Ib.

35. According to the public law of the monarchies of Europe, the authority of ministers, and perhaps of international commissioners, expires on the death, deposition, or abdication of the prince; but not so as between the American republics, in which the Executive power is permanent and continuous, without regard to the governing person, and there is no interruption of the authority or renewal of the credentials of their public ministers on a change of president for whatever cause, provided such president continues to represent and exercise the appointing power of the government.

Construction of Mesilla treaty, 7 Op., 582, Cushing, (1855.)

36. The United States observe as their rule of public law to recognize governments *de facto* and also governing persons *de facto*, without scrutiny of the question of legitimacy of origin or succession.

Ib.

37. Citizens of the United States who hold foreign consulates in the United States are not exempt from jury-duty or service in the militia by the law of nations.

Citizens, foreign consuls, 8 Op., 169, Cushing, (1856.)

38. The United States Government cannot purchase a grant of land in, or concession of right of way over, the territories of another nation, as could an individual or private corporation, since, by the law of nations, one government cannot enter upon the territories of another, or claim any right whatever therein.

The Chiriqui Improvement Company, 9 Op., 286, Black, (1859.)

39. We take our knowledge of international law, not from the municipal code of England, but from natural reason and justice, from writers of known wisdom, and from the practice of civilized nations.

Christian Ernst's case, 9 Op., 356, Black, (1859.)

40. A sovereign state which tramples upon the public law of the world cannot excuse itself by pointing to a provision in its own municipal code.

Ib.

41. Section 2 of the prize act of 1863 (12 Stat., 759) authorizing the taking by the Government of any captured property and the deposit of its value in the Treasury, subject to the jurisdiction of the prize court in which proceedings may be instituted for the condemnation of the property, is a valid exercise of the power of Congress to make rules concerning captures.

Lord Lyons's communication concerning prizes, 10 Op., 519, Bates, (1863.)

42. The provision of that section is not in conflict with the public law of war, and does not impair the just rights of neutrals.

Ib.

43. The rule of international law is well established, that a foreigner who resides in the country of a belligerent can claim no indemnity for losses of property occasioned by acts of war of the other belligerent.

Case of Wheelwright and others, 12 Op., 21, Stanbery, (1866.)

44. If a privateer, duly commissioned by a belligerent, collude with a vessel fitted out in one of our ports, and commanded by one of our citizens, for the purpose of capturing vessels of a country at peace with the United States, to cover her prizes and share with her their proceeds, it is a fraud on the law of nations.

Talbot vs. Janson, 3 Dallas, 133.

45. Congress can declare a general war, or may wage a limited war; limited in place, in objects, or in time. If a general war is declared, its extent and operations are only restricted and regulated by the *jus belli*, forming a part of the law of nations; but if a partial war is waged, its extent and operation depend on our municipal law.

Bas vs. Tingey, 4 Dallas, 37, [43.]

46. Congress may authorize general hostilities, in which case the general laws of war apply to our situation, or partial hostilities, in which case the laws of war, so far as they actually apply to our situation, must be noticed.

Talbot vs. Seeman, 1 *Cranch*, 1, [28.]

47. The laws of the United States ought not, if it be avoidable, so to be construed as to infract the common principles and usages of nations, or the general doctrines of national law.

Ib., [43.]

48. An act of Congress ought never to be construed to violate the law of nations, if any other possible construction remains, and consequently can never be construed to violate neutral rights, or to affect neutral commerce, further than is warranted by the law of nations, as understood in this country.

Murray vs. Schooner Charming Betsy, 2 *Cranch*, 118.

49. Whatever may be the municipal law under which a tribunal acts, if it exercise a jurisdiction which its sovereign is not allowed by the law of nations to confer, its decrees must be disregarded out of the dominions of its sovereign.

Rose vs. Himely, 4 *Cranch*, 241.

50. Full and absolute territorial jurisdiction being alike the attribute of every sovereign, and being incapable of conferring extra territorial power, would not seem to contemplate foreign sovereigns nor their sovereign rights as its objects. One sovereign being in no respect amenable to another, and being bound by obligations of the highest character not to degrade the dignity of his nation by placing himself or its sovereign rights within the jurisdiction of another, can be supposed to enter a foreign territory, only under an express license, or in the confidence that the immunities belonging to his independent sovereign station, though not expressly stipulated, are reserved by implication, and will be extended to him.

Schooner Exchange vs. McFaddon, 7 *Cranch*, 116, [137.]

51. This perfect equality and absolute independence of sovereigns, and this common interest impelling them to mutual intercourse, and an interchange of good offices with each other, have given rise to a class of cases in which every sovereign is understood to waive the exercise of a part of that complete exclusive territorial jurisdiction which has been stated to be the attribute of every nation.

First. One of these is admitted to be the exemption of the person of the sovereign from arrest or detention within a foreign territory.

Second. A second case, standing on the same principles with the first, is the immunity which all civilized nations allows to foreign ministers.

Third. A third case, in which a sovereign is understood to cede a portion of his territorial jurisdiction is where he allows the troops of a foreign prince to pass through his dominions.

Ib.

52. If there be no prohibition, the ports of a friendly nation are considered as open to the public ships of all powers with whom it is at peace, and they are supposed to enter such ports and to remain in them, while allowed to remain, under the protection of the government of the place.

The implied license under which a vessel enters a friendly port may reasonably be construed as containing an exemption from the jurisdiction of the sovereign, within whose territory she claims the rights of hospitality.

Ib.

53. It seems to the court to be a principle of public law, that national ships of war, entering the port of a friendly power open for their reception, are to be considered as exempted by the consent of that power from its jurisdiction.

Ib.

54. Without doubt the sovereign of the place is capable of destroying this implication.

Ib.

55. It is clear, by the common law, that an alien can take lands by purchase, though not by descent; or, in other words, he cannot take by the act of law, but he may by the act of the party. This principle has been settled in the year-books, and has been uniformly recognized as sound law from that time. Nor is there any distinction whether the purchase be by grant or by devise. In either case, the estate vests in the alien, not for his own benefit, but for the benefit of the state; or, in the language of the ancient law, the alien has the capacity to take, but not to hold, lands, and they may be seized into the hands of the sovereign. But until the lands are so seized the alien has complete dominion over the same, * * and may convey the same to a purchaser. * * * We do not find that, in respect to these general rights and disabilities, there is any admitted difference between alien friends and alien enemies. During war the property of alien enemies is subject to confiscation *jure belli*, and their civil capacity to sue is suspended. But as to capacity to purchase, no case has been cited in which it has been denied; and in the *Attorney-General vs. Wheedan and Shales*, (Park. Rep., 267,) it was adjudged that a bequest to an alien enemy was good, and, after peace, might be enforced. Indeed, the common law in these particulars seems to coincide with the *jus gentium*.

Fairfax's devisee vs. Hunter's lessee, 7 Cranch, 603, [619.]

56. The law of prize is part of the law of nations. In it, a hostile character is attached to trade, independently of the character of the trader who pursues or directs it.

The Rapid, 8 Cranch, 155, [162.]

57. The principles of reason and justice, which constitute the unwritten law of nations, are, in some degree, fixed and rendered stable by judicial decisions.

Thirty hogsheads of sugar vs. Boyle, 9 Cranch, 191, [198.]

58. The rule that the goods of an enemy, found in the vessel of a friend, are prize of war, and that the goods of a friend, found in the vessel of an enemy are to be restored, is believed to be a part of the original law of nations, as generally, perhaps universally, acknowledged.

The Nereide, 9 Cranch, 388, [418.]

59. It is a principle of the law of nations that a neutral cargo found on board an armed enemy's vessel, is not liable to condemnation as prize of war.

The Atalanta, 3 Wheaton, 409.

60. The act of 1819, section 5, (3 Stat., 513, R. S., § 5368,) referring to the law of nations for a definition of the crime of piracy, is a constitutional exercise of the power of Congress to define and punish that crime. Piracy is defined by the law of nations with reasonable certainty. Robbery or forcible depredation upon the sea, *animo furandi*, is piracy by the law of nations and by the act of Congress. (See R. S., title 70, chap. 3.)

United States vs. Smith, 5 Wheaton, 153.

61. Whenever a capture is made by any belligerent in violation of our neutrality, if the prize come voluntarily within our jurisdiction, it should be restored to the original owners; this is done on the footing of the general law of nations.

La Amistad de Rues, 5 Wheaton, 385.

62. There is nothing in the law of nations that forbids our citizens sending armed vessels as well as munitions of war to foreign ports for sale.

The Santissima Trinidad, 7 Wheaton, 283, [340.]

63. The African slave-trade is not contrary to the law of nations.

The Antelope, 10 Wheaton, 66.

64. The right of search is a belligerent right only.

One nation cannot execute the penal laws of another, and consequently a foreign vessel engaged in the slave-trade cannot lawfully be captured by an American cruiser.

Ib.

65. Pirates may, without doubt, be lawfully captured on the ocean by the public or private ships of every nation ; for they are, in truth, the common enemies of all mankind, and, as such, are liable to the extreme rights of war. And a piratical aggression by an armed vessel sailing under the regular flag of any nation, may be justly subjected to the penalty of confiscation for such a gross breach of the law of nations. But every hostile attack, in a time of peace, is not necessarily piratical. It may be by mistake, or in necessary self-defense, or to repel a supposed meditated attack by pirates. It may be justifiable, and then no blame attaches to the act ; or it may be without just excuse, and then it carries responsibility for damages. If it proceed further, if it be an attack from revenge and malignity, from gross abuse of power, and a settled purpose of mischief, it then assumes the character of a private, unauthorized war, and may be punished by all the penalties which the law of nations can properly administer.

The Marianna Flora, 11 *Wheaton*, 40, [41.]

United States vs. Brig Malek Adhel, 2 *Howard*, 236.

66. As respects performance of the conditions of a grant by a private grantee, the date of a treaty is the date of its final ratification.

United States vs. Arredondo, 6 *Peters*, 691, [748.]

67. By the law of nations, the inhabitants, citizens, or subjects of a conquered or ceded country, territory, or province retain all the rights of property which have not been taken from them by the orders of the conqueror, or the laws of the sovereign who acquired it by cession, and remain under their former laws until they shall be changed.

Mitchel vs. United States, 9 *Peters*, 734.

68. By the law of nations the rights and property of the inhabitants are protected, even in the case of a conquered country, and held sacred and inviolable when it is ceded by treaty, with or without any stipulation to such effect ; and the laws, whether in writing or evidenced by the usage and customs of the conquered or ceded country, continue in force till altered by the new sovereign.

Strother vs. Lucas, 12 *Peters*, 410, [436.]

69. Ship's papers and documents accompanying property, under the law of nations, are but *prima facie* evidence of such property, and are of no force when shown to be fraudulent.

United States vs. The Amistad, 15 *Peters*, 518, [520.]

70. It is in accordance with the laws of nations that the treaty of San Ildefonso took effect on the day of its date.

Davis vs. The Police Jury of Concordia, 9 *Howard*, 280.

71. Though it is the duty of the captor, under the law of nations, to send in the captured property for adjudication by a court of his own country having competent jurisdiction, yet he may be excused, by imperative circumstances, for making a sale of such property, and afterwards seasonably subjecting the proceeds to the jurisdiction of a proper court of prize.

Jecker vs. Montgomery, 13 Howard, 498, [516.]

72. It may be averred as a part of the law of nations—forming a part, too, of the municipal jurisprudence of every country—that in a state of war between two nations, declared by the authority in whom the municipal constitution vests the power of making war, the two nations and all their citizens or subjects are enemies to each other. The consequence of this state of hostility is, that all intercourse and communication between them is unlawful.

Jecker vs. Montgomery, 18 Howard, 112.

73. The presumption of the law of nations is against an owner who suffers his personal property to continue in a hostile country which he abandons in order to go to the other belligerent, and so to return to his proper allegiance and soil, for much length of time.

The William Bagaley, 5 Wallace, 377, [408, 409.]

74. Although it is true, as a principle of international law, that, as respects the right of either government under it, a treaty is considered as concluded and binding from the date of its signature, and that in this regard the exchange of ratifications has a retroactive effect, confirming the treaty from its date; a different rule prevails where the treaty operates on individual rights. There the principle of relation does not apply to rights of this character which were vested before the treaty was ratified, and, in so far as it affects them, it is not considered as concluded until there is an exchange of ratifications.

Haver vs. Yaker, 9 Wallace, 32.

75. Unless treaty stipulations provide otherwise, a merchant vessel of one country visiting the ports of another for the purpose of trade, is, so long as she remains, subject to the laws which govern them.

United States vs. Dieckelman, 92 U. S. R., S. C., 520.

76. Where, in time of war, a foreign vessel, availing herself of the proclamation of the President of May 12, 1862, (12 Stat., 1263,) entered the port of New Orleans, the blockade of which was not removed, but only relaxed in the interests of commerce, she thereby assented to the conditions imposed by such proclamation that she should not take out goods contraband of war, nor depart until cleared by the collector of customs according to law.

Ib.

77. As New Orleans was then governed by martial law, a subject of a foreign power entering that port with his vessel under the special license of the proclamation, became entitled to the same rights and privileges accorded under the same circumstances to loyal citizens of the United States. Restrictions placed upon them operated equally upon him. *Ib.*
78. Money, silver-plate, and bullion, when destined for hostile use or for the purchase of hostile supplies, are contraband of war. In this case, the determination of the question whether such articles, part of the outward-bound cargo of the vessel, were contraband devolved upon the commanding general at New Orleans. Believing them to be so, he, in the discharge of his duty, ordered them to be removed from her, and her clearance to be withheld until his order should be complied with. *Ib.*
79. Where the detention of the vessel in port was caused by her resistance to the orders of the properly-constituted authorities whom she was bound to obey, she preferring such detention to a clearance upon the conditions imposed : Held, that her owner, a subject of Prussia, is not entitled to any damages against the United States, under the law of nations or the treaty with that power. *Ib.*
80. Every nation has exclusive jurisdiction over the waters adjacent to its shores to the distance of a cannon shot or marine league. *The Ann, 1 Gallison, 62.*
81. By the law of nations the debts, credits, and corporeal property of an enemy, found in the country on the breaking out of war, are confiscable. *Cargo of ship Emulous, 1 Gallison, 562.*
82. The law of nations does not prohibit the carrying of enemies' goods in neutral vessels ; so far from so doing, upon the condemnation of the goods, the vessel is entitled to freight. *Schwartz vs. Insurance Company of North America, 3 Washington, 117*
83. But if a neutral endeavors, by false appearances, to cover the property of a belligerent from the lawful seizure of his enemy, such conduct identifies the neutral with the belligerent whom he thus endeavors to protect ; and is a fraud on the neutrality of his own government and upon the rights of the belligerent. *Ib.*
84. The law of nations identifies the property of a foreign minister, attached to his person, or in his use, with his person. To insult them is an attack on the minister and his sovereign ; and it appears to have been the intention of the act of Congress to punish offenses of this kind. *United States vs. Hand, 2 Washington, 435.*
85. A secretary attached to the Spanish legation is entitled to the protection of the law of nations against any civil or criminal prosecution. *Ex parte Cabrera, 1 Washington, 232.*

86. A foreign government has no right, by the law of nations, to demand of the Government of the United States a surrender of a citizen or subject of such foreign country, who has committed a crime in his own country, and is afterwards found within the limits of the United States. That is a right which has no existence without and can only be secured by a treaty stipulation.

Case of José Ferreira dos Santos, 2 Brockenbrough, 493.

87. Where a gun was fired from an American ship lying in a harbor of one of the Society Islands, killing a person on board a schooner belonging to the natives in the harbor: Held, that the act was, in contemplation of law, committed on board the foreign schooner, where the shot took effect, and that jurisdiction of the offense belonged to the foreign government and not to the courts of the United States. Where a prisoner under such circumstances was sent home for trial, it was held that the court had no jurisdiction.

United States vs. Davis, 2 Sumner, 482.

88. By the law of nations, where a war exists between two distinct and independent powers, there must be a suspension of all commercial intercourse between their citizens; but this principle has not been applied to the States which joined the so-called Southern Confederacy.

The destination of arms and munitions of war, and the use intended to be made thereof at the time of seizure, must furnish a test of their status as contraband or otherwise.

United States vs. Six Boxes of Arms, 1 Bond, 446.

89. In a state of war between two nations a commission to a private armed vessel from either of the belligerents affords a defense, according to the law of nations, in the courts of the enemy, against a charge of robbery or piracy on the high seas of which it might be guilty in the absence of such authority.

United States vs. Baker, 5 Blatchford, 13.

90. The seizure of enemy property by the United States, as prize of war on land, *jure belli*, is not authorized by the law of nations, and can be upheld only by an act of Congress.

United States vs. 1,756 Shares of Capital Stock, 5 Blatchford, 232.

91. A sale by a belligerent of a war ship to a neutral in a neutral port is invalid by the law of nations, as construed both in England and America.

This doctrine applied to the sale of the *Georgia* in the port of Liverpool, in June, 1863, the purchaser having full notice of the character of the vessel, but buying in good faith and for his own use.

The Georgia, 1 Lowell, 96.

ISTHMUS OF PANAMA.

1. The act of the government of New Granada, conceding to a company the exclusive right to construct a railroad across the Isthmus of Panama, must be construed so as to give that right within the true geographical boundaries of the isthmus. Those boundaries do not extend on the north to the Costa Rica line, nor do they include the Isthmus of Chiriqui.

The Chiriqui Co., 9 Op., 391, Black, (1859.)

2. Article 35 of the treaty of 1846 with New Granada, (Pub. Trs., 558,) binds this Government absolutely to guarantee the perfect neutrality of the Isthmus of Panama, on the demand of the proper party; and this obligation must be performed by any and all means which may be found lawful and expedient.

Neutrality of the Isthmus of Panama, 11 Op., 67, Bates, (1864.)

3. Article 35 of the treaty of 1846 with New Granada (Pub. Trs., 558) does not oblige this Government to protect the Isthmus of Panama from invasion by a body of insurgents from the United States of Colombia.

Ib., 391, Speed, (1865.)

JEWELS OF THE PRINCESS OF ORANGE.

1. The jewels of the Princess of Orange, one of the family of the King of the Netherlands, stolen (or received, knowing them to have been stolen) and brought into this country by Polari, in violation of our revenue-laws, and seized and libelled for such violation in the name of the United States, and now claimed by the minister of the King of the Netherlands, are not liable to condemnation.

Jewels of the Princess of Orange, 2 Op., 482, Taney, (1831.)

2. The real owner has done no act that can rightfully subject them to forfeiture. The party who imported them into this country obtained the possession fraudulently and without her knowledge, and brought them here against her will. Introduced thus against the consent of the owner, they stand on the same footing with property cast upon our shores by the violence of the winds and waves, and are entitled to the same protection.

Ib.

3. There being sufficient evidence that they belong to the princess, and the minister of her sovereign, friendly to the United States, asking their restoration, the President should order the district attorney to discontinue the prosecution, and direct the marshal having them in possession to deliver them over to the minister of the king.

Ib.

4. The opinion delivered the 28th ultimo, concerning the discontinuance of the prosecution and the delivery of the jewels of the Princess of Orange, reconsidered and affirmed, with suggestions relative to carrying the recommendations into effect.

Jewels of the Princess of Orange, 2 Op., 496, Taney, (1832.)

5. Seizures by collectors are not made pursuant to or by virtue of any judicial authority; and courts have no control over the property seized until the same is libeled. When libeled the property seized is in the custody of the courts, and is held by the collector as their officer, and subject to their direction *pendente lite*. Whenever the prosecution shall for any cause be discontinued, the collector ceases to be the officer of the court; but, as collector of customs, he holds the property by the same right which he exercised before the filing of the libel.

Ib.

6. When the judicial responsibility of the collector ceases, the full responsibility of the collector to the executive department is resumed, so that the collector holds the property seized, the same as if no libel had been filed. And as the President might have directed the restoration before the libel was filed, so he may likewise when it has been discontinued.

Ib.

7. The practice in New York of giving the custody of goods libeled to the marshal is erroneous; the collector is legally entitled to the keeping of the property after the proceedings are instituted as well as before.

Ib.

8. In this case, as the practice has been to give the marshal the custody of goods, and as embarrassments may follow another course, an order to the marshal reciting particularly the grounds on which it is given may be sent to the district attorney, to be filed in court with the order to dismiss.

Ib.

9. After the discontinuance, the court may be moved to order the marshal to deliver the jewels to Chevalier Huygens.

Ib.

JOINT RESOLUTIONS.

See Resolutions of Congress.

JUDGMENTS.

See Consular Courts.

JUDICIAL EXPENSES.

See *Consular Courts*.

JURISDICTION.

See *Crimes*.

Departments of Government.

Exterritoriality.

Foreign Consuls.

Public Minisiers.

Sovereignty.

1. Jurisdiction of consular courts in China discussed.

Judicial authority in China, 7 Op., 495, Cushing, (1855.)

2. Discussion of jurisdiction over acts committed on board of American ships on the high seas and in foreign ports.

The Atalanta, 8 Op., 73, Cushing, (1856.)

3. Every nation has exclusive jurisdiction over the waters adjacent to its shores, to the distance of a cannon-shot or marine league.

The brig Ann, 1 Gallison, 62.

4. A gun was fired from an American ship, lying in the harbor of Raiatea, one of the Society Isles, by which a person on board a schooner, belonging to the natives and lying in the harbor, was killed: Held, that the act was, in contemplation of law, done on board the foreign schooner, where the shot took effect, and that jurisdiction of it belonged to the foreign government, and not to the courts of the United States, under the Crimes Act of 1790.

United States vs. Davis, 2 Sumner, 482.

JURY DE MEDIETATE.

1. A person born in Ireland, but naturalized as a citizen of the United States, is not entitled, when arraigned in a British court for the offense of treason-felony, to the privilege of a jury *de medietate*.

Warren's case, 12 Op., 319, Stanbery, (1867.)

2. As the right of trial by jury *de medietate* does not exist in any of the United States, we have no right to complain that an American citizen, indicted for crime in Great Britain, is not entitled to such privilege.

LAWS.

See *Resolutions of Congress.*

1. The Supreme Court of the United States has uniformly held that in the term laws, used in a treaty, is included custom and usage, when once settled, though it may be "comparatively of recent date, and is not one of those to the contrary of which the memory of man runneth not, which contributed so much to make up the common-law code."

Strother vs. Lucas, 12 Peters, 436.

LAWS OF WAR.

See *Illicit intercourse.*

Belligerents.

Civil war.

Contraband.

Neutrality.

LEAVE OF ABSENCE.

See *Compensation.*

LEGAL TENDER.

See *Treaties—Peru.*

Spain.

LEGISLATIVE CONSTRUCTION.

1. Although it may have been a rule of an Executive Department to construe an act of Congress relating to claims in a particular manner, yet when Congress has afterward expressed an opinion in conflict with that of the Department, such action of Congress has been considered as in the nature of a legislative interpretation, which becoming courtesy to the legislative department requires the Executive to observe.

Case of representative of John M. Galt, 5 Op., 83, [84,] Johnson, (1849.)

LETTERS ROGATORY.

1. The circuit court will issue letters rogatory for the purpose of obtaining testimony, when the government of the place where the evidence is to be obtained will not permit a commission to be executed. Form of letters in such case given.

Nelson vs. United States, 1 Peters, C. C., 235.

LIBEL.*See Public Ministers.***LIGHT-HOUSE DUES.***See Treaties—Denmark.***LIMITED INTERCOURSE.**

1. The Government of the United States clearly has power to permit limited commercial intercourse with an enemy in time of war, and to impose such conditions thereon as it sees fit; this power is incident to the power to declare war, and to carry it on to a successful termination.

It seems that the President alone, who is constitutionally invested with the entire charge of hostile operations, may exercise this power; but whether so or not, there is no doubt that, with the concurrent authority of the Congress, he may exercise it according to his discretion.

*Hamilton vs. Dillin, 21 Wallace, 73.***MAJORITY.**

1. The international relation of the period of majority in the United States considered.

*Baron von Gerolt's letter, 8 Op., 62, Cushing, (1856.)***MALICIOUS PUBLICATIONS.***See Public Ministers.***MANDATORY STATUTES.***See Statutes.***MARINERS.***See Seamen.*

MARITIME WAR.*See War.*

1. During a maritime war between France and the United States, the act of aiding or abetting France within the United States by a French subject commissioned by France, and acting openly according to his commission, will be hostility, and as such must be treated according to the laws of war.

*Treason, 1 Op., 84, Lee, (1798.)***MARSHALS OF CONSULAR COURTS.***See Consular Courts.***MARRIAGES.**

1. Consuls of the United States have no lawful authority as such to solemnize marriages in countries comprehended within the pale of the international public law of Christendom, (but see subsequent act, 1860, section 31, 12 Stat., 79, R. S., § 4082,) otherwise, in countries not Christian, where by convention or in fact the rights of extritoriality are possessed by citizens of the United States.

*Celebration of marriages, 7 Op., 18, Cushing, (1854.)***MARRIED WOMEN.***See Citizenship.***MARTIAL LAW.**

1. Martial law is the law of military necessity in the actual presence of war, It is administered by the General of the Army, and is in fact his will. Of necessity it is arbitrary, but it must be obeyed.

United States vs. Dickelman, 92 U. S. R., 8. C., 526.

2. A merchant-vessel of one country visiting, for the purpose of trade, a port of another where martial law has been established, under belligerent right, subjects herself to that law while she is in such port.

*Id.***MASTERS OF VESSELS.***See Seamen.*

MESILLA TREATY.

1. With Mexican Republic (Pub. Trs., 503) construed.

Construction of, 7 Op., 582, Cushing, (1855.)

2. The question whether the United States will pay according to their original tenor drafts drawn by the Mexican government, under the Mesilla convention, or suspend the payment at the subsequent request of that government, is matter of political not of legal determination.

Payment of drafts, 7 Op., 599, Cushing, (1855.)

MILITARY COURTS.

1. The Constitution did not prohibit the creation by military authority of courts for the trial of civil causes during the civil war in conquered portions of the insurgent States. The establishment of such courts was the exercise of the ordinary rights of conquest.

Mechanics and Traders' Bank vs. Union Bank, 22 Wallace, 276.

2. A court established by proclamation of the commanding general in New Orleans, on the 1st of May, 1862, on the occupation of the city by the Government forces, will, in the absence of proof to the contrary, be presumed to have been authorized by the President.

• *Id.*

MINISTERS PLENIPOTENTIARY.

See Compensation.

Diplomatic Officers.

Public Ministers.

MOROCCO.

See Extraterritoriality.

MUNICIPAL LAWS.

See Sovereignty.

MUNITIONS OF WAR.

See Neutrality.

Contraband.

MUSCAT.

See *Exterritoriality*.

MUTINY.

See *Crimes*.

NATIONAL CHARACTER.

1. A vessel loses her national character by assuming a piratical character, and a piracy committed by a foreigner from on board such a vessel, upon any other vessel whatever, is punishable under section 8 of act of 1790, (1 Stat., 113; R. S., § 5360.)

United States vs. Pirates, 5 Wheaton, 184.

2. The commission of a public vessel, signed by the proper authorities of the nation to which it belongs, is complete proof of national character; it imports absolute verity, and the title to the vessel, or mode in which it was acquired, is not examinable by a foreign court.

The Santissima Trinidad, 7 Wheaton, 283,

3. In order to prove that an American vessel has ceased to be an American vessel, it is not enough to prove that she was taken abroad and sold; it must be proved that she was sold and transferred to a foreigner.

United States vs. Gordon, 5 Blatchford, 18.

NATURALIZATION.

See *Citizenship*.

1. Naturalization signifies the act of adopting a foreigner and clothing him with all the privileges of a native citizen or subject

Christian Ernst's case, 9 Op., 356, Black, (1859.)

2. Where a person was admitted to citizenship July 10, 1873, by a State court having jurisdiction, and it afterward appears by a copy of the registry of births at Hamburg, where he was born, that he was born February 22, 1853: Held, that as the court having jurisdiction had found that the facts and conditions to entitle him to citizenship existed, that such finding had the effect of a judgment, and was conclusive.

Levy's case, 14 Op., 509, Williams, (1874.)

3. Under the act of 1795, (1 Stat., 414, repealed,) the administration of the oath of allegiance amounts to a judgment of the court for the admission of the applicant to the rights of a citizen, and implies that all prerequisites had been complied with.

Campbell vs. Gordon, 6 Cranch, 176.

4. Under the act of 1802, (2 Stat., 153, R. S., § 2172,) a minor child of a father so naturalized became a citizen, though not then within the United States, provided she was resident therein at the time of the passage of the act.

Ib.

5. The expression "Armies of the United States," as used in the acts of Congress with respect to naturalization, and particularly section 20 of the act of 1862, (12 Stat., 597, R. S., § 2166,) does not include marines.

In re Bailey, 2 Sawyer, 200.

NATURALIZED CITIZENS.

See Citizenship.

1. The opinion of a British judge, directing a plaintiff who had been a British subject, but who had taken the oath of allegiance to the United States, to be nonsuited, on the ground that the contract which formed the subject-matter of the suit was unlawful between British subjects, and regarding the plaintiff as such, is founded on the ancient and standing laws of Great Britain, which can be altered only by the legislative power of the nation.

Green's case, 1 Op., 53, *Bradford*, (1794.)

2. A person born in Ireland, but naturalized as a citizen of the United States, is not entitled, when arraigned in a British court for the offense of treason-felony, to the privilege of a jury *de medietate*.

The right being conferred by British law, must, in a British court, be regulated by that law.

Warren's case, 12 Op., 319, *Stanbery*, (1867.)

3. It is well-established English law, that a native-born subject of Great Britain is not capable of throwing off his allegiance.

Ib.

4. The statutes of the United States make no provision for trial by jury *de medietate*.

The right of jury *de medietate* does not exist at this time in any of the States of the Union.

Ib.

5. The United States have no right to complain that one of its citizens, indicted for a crime in Great Britain, is not entitled to a privilege not accorded by Federal or State law to a subject of Great Britain indicted for crime committed in the United States.

Ib.

6. A question as to status or citizenship, arising in the United States, is determinable by our law; or, if it arose on the high seas, or anywhere out of the jurisdiction or operation of British law, it would be a question either under our own law or the public law, according to the circumstances under which the right was asserted or denied.

Ib.

7. A citizen of the North German Confederation, who becomes a naturalized citizen of the United States, must have had an uninterrupted residence of five years in the United States before he is entitled to the immunities guaranteed by the treaty with that confederation of 1868, (Pub. Trs., 575.) The recital contained in the record of the naturalization proceedings, that he had resided continuously in this country for more than five years, is not conclusive as to the fact so recited.

Case of Moses Stern, 13 Op., 376, Akerman, (1871.)

8. By the first article of the convention of 1870, between the United States and Austria-Hungary, (Pub. Trs., 33,) a residence of five years, in addition to naturalization, is a prerequisite to a change of citizenship.

Heinrich's case, 14 Op., 154, Williams, (1872.)

9. A naturalized citizen who resides abroad has the same right to the protection of the Government, and stands upon the same footing in all other respects, as a citizen by birth residing abroad.

Reply to President's inquiries, 14 Op., 295, Williams, (1873.)

NEGOTIABLE PAPER.

see *Bills of Exchange.*

NEUTRAL GOODS.

1. The rules that neutral bottoms make neutral goods, and that enemies' bottoms make enemies' goods, are not only separable in their nature, but have been generally separated; and they are held by the United States to be distinct.

Consequently, a stipulation for the former rule in a treaty does not silently introduce the latter.

The Nereide, 9 Cranch, 388.

2. The fact that Spain administers the latter rule as against neutrals, does not authorize the court to retaliate upon Spanish subjects a like departure from the law of nations without legislation directing it.

Ib.

3. A neutral may lawfully ship his goods on board an armed belligerent vessel, and if her force is used in a combat in which he gives no aid, his goods are not affected.

Ib.

NEUTRALITY.

See Treaties.

1. Acts of hostility committed by American citizens against such as are in amity with us, being in violation of a treaty and against the public peace, are offenses against the United States, so far as they were committed within the territory or jurisdiction of the United States, (and the high seas are within such jurisdiction as to citizens of the United States.)

Attack on Sierra Leone, 1 Op., 57 Bradford, (1795.)

2. Acts of the kind committed in foreign countries are not within the jurisdiction, and the offender must be dealt with abroad, and after proclamation by the President will have forfeited all protection from the American Government.

Ib.

3. It is the right of an enemy to purchase goods and instruments of war of a neutral nation; such right may be taken away by a law forbidding it.

If the reason for the passing of such an act were to impede the military operations of one belligerent and to favor another, this would constitute a breach of neutrality.

Sale of ships to the British, 1 Op., 61, Lee, (1796.)

4. As a rule it is not prohibited to a neutral vessel to carry provisions for the fleets or armies of belligerents. A foreign government may purchase ships in the United States and load them with provisions for their fleets or armies, and American mariners may serve on such vessels, provided they do not form part of an expedition or closely follow the army from place to place.

Ib.

5. A citizen of a neutral state who, for hire, serves on a neutral ship employed in contraband commerce with either of the belligerent powers, is not liable to any prosecution for so doing by the municipal laws of his own state, nor is he punishable personally, though taken in the act, by that belligerent nation to whose detriment the prohibited trade would operate.

Ib.

6. It is reasonable, as applicable to all nations, to permit a portion of a prize cargo to be sold under the superintendence of the public officers for reparation of the ship; as to France, it is within the 19th article of the treaty of 1778. (Pub. Trs., 209—annulled by act of 1798—1 Stat., 578.)

Reparation of prize ships, 1 Op., 67, Lee, (1796.)

7. There is no law that can prevent a merchant or ship-owner selling his vessel and cargo to a citizen or inhabitant of South America; but if a vessel be fitted out, furnished, &c., with intent to employ it in the service of any foreign state, to cruise or commit hostilities upon the subjects or property of another state with which the United States is at peace, it would be unlawful.

Sale of an English ship, 1 Op., 190, Rush, (1816.)

8. A vessel fitted out at Savannah with armament, munitions, and sea-stores, and afterward found with a commission from the republic of Venezuela to cruise against the subjects of Spain, and having sailed on such a cruise, but under another name, and being seized at Savannah on the charge of having been fitted out in a port of the United States to cruise against Spain, is a fit case for adjudication, and not one calling for the interference of the Government.

The Coroný, 1 Op., 231, Wirt, (1818.)

9. Colombian vessels are entitled, under articles 6 and 31 of the treaty with that republic of 1824, (Pub. Trs., 151 and 157,) to make repairs in our ports when forced into them by stress of weather, but not to enlist recruits there, either from our citizens or from foreigners, except such as may be transiently within the United States.

The Libertador, 2 Op., 4, Wirt, (1825.)

10. It is not a breach of neutrality to permit a Spanish merchantman, captured as a prize by a Mexican war-vessel, and brought by the latter into an American port in an unseaworthy condition, to be repaired and put in a condition to be carried home to a port of the captor for adjudication, whether her disabilities proceeded from the sea or the action.

Case of a Spanish ship, 2 Op., 86, Wirt, (1828.)

11. There is high authority for the position that a prize may be brought into a neutral port and sold, without violating the law of nations concerning neutrality; but as there is no doubt of the authority of the neutral sovereign to prohibit such sales, and as the strongest considerations of expediency and safety urge him to do so, the better course, clearly, is to prohibit them.

Id.

12. It would be a breach of neutrality to permit a neutral port to be made a cruising station for a belligerent, or a place of depot for his spoils and prisoners.

Ib.

13. The building of two schooners of war in New York for the Mexican government, and preparing to furnish the same with guns and the usual military equipment, is clearly a violation of section 3 of the act of 1818. (3 Stat., 447; R. S., § 5283.)

Case of schooners built for Mexico, 3 Op., 738 Legaré, (1841.)

14. These vessels having been built expressly for the service of Mexico, which is waging war against Texas, (recognized by the United States as an independent State,) the persons are liable to the penalties of the act, and the vessels to forfeiture.

Ib.

15. The policy of this country is, and ever has been, perfect neutrality and non-interference in the quarrels of other nations.

Ib.

16. Where certain vessels, being constructed in the United States for Mexico for the purpose of waging war against Texas, (an independent State,) were not delivered, nor the property changed, within our jurisdiction, but were sent out of port under control of our own citizens unarmed, and where every possible precaution had been taken to insure pacific conduct on the high seas, the doctrine of the preceding opinion is reaffirmed, but does not apply as fully to the case now presented as was supposed from the first statement of the case.

Case of schooners built for Mexico, 3 Op., 741, Legaré, (1842.)

17. Nevertheless, although the sale is made abroad, if the vessels were equipped by American citizens within the United States for belligerent purposes, and for a nation belligerent to another with which ours is at peace, knowing the purposes for which they are to be employed, it is insisted that the equipment is repugnant to the act of 1818. (3 Stat., 447; R. S., § 5283.)

Ib.

18. All trading with a belligerent, in ships of war already equipped for service, is repugnant to the settled policy of the United States and to the solemn declaration of Congress in the act of 1818. (3 Stat., 447; R. S., § 5286.)

However popular opinion may have changed on so important a subject, the act of 1818, like that of 1794, (1 Stat., 381, repealed,) was intended to secure, beyond all risk of violation, the neutral and pacific policy which they consecrate as our fundamental law.

Ib.

19. All equipping within our jurisdiction of vessels of war for a belligerent by an American citizen, knowing the purposes for which they are to be employed, is unlawful.

Ib.

20. The enlistment of seamen or others for marine service on Mexican steamers in the port of New York, they not being Mexicans transiently within the United States, is a clear violation of the 2d section of the act of 1818, (3 Stat., 448; R. S., § 5282;) and the persons enlisted, as well as the officers enlisting them, are liable to the penalties of the act.

Enlistment of seamen for Mexico, 4 Op., 336, Nelson, (1844.)

21. The augmentation of the force of the Mexican war-steamers in the port of New York, by adding to the number of their guns, or by changing those originally on board for guns of larger caliber, or by the addition of any equipment solely applicable to war, is a violation of the 5th section of the same act. (R. S., § 5285.)

Ib.

22. The repair of their bottoms, copper, &c., does not constitute any increase or augmentation of force within the meaning of the act; and the steamers themselves are not subject to seizure by any judicial process under it.

Ib.

23. The commanders and officers of vessels of other nations, found to have violated the statute in question, are amenable to the criminal jurisdiction of our courts.

Ib.

24. The purchase and fitting out of a war-steamer by the German government in the port of New York, while a state of war exists between that government and Denmark, adapted for cruising and committing hostilities against the property or subjects of the latter, is contrary to the provisions of the 3d section of the act of 1818. (3 Stat., 447; R. S., § 5283.)

Purchase of steamer by Germany, 5 Op., 92, Johnson, (1849.)

25. The act makes no distinction between the degrees of intent with which a vessel shall be fitted out; any intent to commit hostilities against a nation with which the nation fitting her out is at war, is within its prohibition.

Ib.

26. According to the law of nations, neutrals have the right to purchase during the war the property of belligerents, whether ships or anything else; and any regulation of a particular state which contravenes this doctrine is against public law, and in mere derogation of the sovereign authority of all other independent states.

Letter of British minister as to purchase of ships, 6 Op., 638, Cushing, (1854.)

27. A citizen of the United States may lawfully purchase a merchant-ship of either of the belligerents—Turkey, Russia, Great Britain, France, or Sardinia; if purchased *bona fide*, such ship becomes American property and entitled as such to the protection and to the flag of the United States; and although she cannot take out a register by our law, yet that is because she is foreign-built, not because she is belligerent-built, and she may obtain a register by special act of Congress.

Ib.

28. It is a settled principle of the law of nations that no belligerent can rightfully make use of the territory of a neutral state for belligerent purposes without the consent of the neutral government.

British consul's case, 7 Op., 367, Cushing, (1855.)

29. The undertaking of a belligerent to enlist troops of land or sea in a neutral state, without the previous consent of the latter, is a hostile attack on its national sovereignty.

Ib.

30. A neutral state may, if it please, permit or grant to belligerents the liberty to raise troops of land or sea within its territory; but for the neutral state to allow or concede this liberty to one belligerent and not to all, would be an act of manifest belligerent partiality, and a palpable breach of neutrality.

Ib.

31. The United States constantly refuse this liberty to all belligerents alike, with impartial justice; and that prohibition is made known to the world by a permanent act of Congress.

Ib.

32. Great Britain, in attempting by the agency of her military and civil authorities in the British North American Provinces, and her diplomatic and consular functionaries in the United States, to raise troops here, committed an act of usurpation against the sovereign rights of the United States.

All persons engaged in such undertaking to raise troops in the United States for the military service of Great Britain, whether citizens or foreigners, individuals or officers, unless protected by diplomatic privilege, are indictable as malefactors by statute.

Ib.

33. Foreign consuls are not exempted, either by treaty or by the law of nations, from the penal effect of the statute.

Ib.

34. The act of Congress prohibiting foreign enlistments is a matter of domestic or municipal right, as to which foreign governments have no right to inquire, the international offense being independent of the question of the existence of a prohibitory act of Congress.

Ib.

35. A foreign minister who engages in the enlistment of troops here for his government, is subject to be summarily expelled from the country ; or, after demand of recall, dismissed by the President.

Ib.

36. Miscellaneous expenditures, incurred by order of the State Department, for the purpose of preserving the neutrality of the United States, are chargeable to the appropriate funds placed by law in the control of that Department.

Case of the United States and Ocean Wave, 7 Op., 398, Cushing, (1855.)

37. The doctrine of the right of neutrals to purchase the ships of belligerents re-affirmed.

Case of purchase of ships, 7 Op., 538, Cushing, (1855.)

38. If agents of the British government, being instructed to enlist military recruits, succeed by ingenious devices in evading the municipal law, and so escape punishment as malefactors, such successful evasion serves to increase the intensity of the international wrong done to the United States.

British enlistments, 8 Op., 468, Cushing, (1855.)

39. Report to the President on the legal questions involved in the enlistment of troops by British officers in the United States.

British enlistments, 8 Op., 476, Cushing, (1856.)

40. The commander of the military department of California has no authority to prohibit our own citizens from exporting munitions of war, by way of merchandise, to the belligerents in Mexico.

Exportation of arms to Mexico, 11 Op., 408, Speed, (1865.)

41. Neutrals may lawfully sell at home to a belligerent purchaser, or carry themselves to the belligerent powers, contraband articles, subject to the right of seizure *in transitu*. The right of the neutral to transport, and of the hostile power to seize, are conflicting rights, and neither party can charge the other with criminal act.

Ib.

42. The district attorney should not be instructed, in the case of a vessel seized and libeled for an intended breach of the neutrality laws, to consent to the bonding of the vessel.

The Meteor, 11 Op., 444, Speed, (1866.)

43. There is no law or regulation which forbids any person or government, whether the political designation be real or assumed, from purchasing arms from citizens of the United States, and shipping them at the risk of the purchaser.

Arms for Maximilian, 11 Op., 451, Speed, (1865.)

44. The rule of international law is well established that a foreigner who resides in the country of a belligerent can claim no indemnity for losses of property occasioned by acts of war of the other belligerent.

Case of Wheelwright and others, 12 Op., 21, Stanbery, (1866.)

45. American merchants domiciled for commercial purposes at Valparaíso cannot sustain a claim for indemnity against Spain or Chili for losses of merchandise in the conflagration caused by the bombardment of Valparaíso by the Spanish fleet in March, 1866.

Id.

46. Upon the facts of the case as to the steamship *R. R. Cuyler*, it appears that this vessel was prematurely and without probable cause libeled for violation of the neutrality laws; and she should be released on the owners giving the bond required by section 10 of the act of 1818. (3 Stat., 449; R. S., § 5289.)

The R. R. Cuyler, 12 Op., 113, *Stanbery*, (1867.)

47. Judicial proceedings should not be instituted by the United States under section 3 of the act of 1818 (3 Stat., 448; R. S., § 5283) against certain gunboats building in New York for the Spanish government, and which, there is reason to believe, are to be employed by that government against Cuba. The provisions of that section examined and shown to be inapplicable, in view of all the circumstances, to the case under consideration.

Neutrality act, 13 Op., 177, *Hoar*, (1869.)

48. Proof that a vessel transported from Aspinwall to the coast of Cuba, men, arms, and munitions of war, destined to aid the Cuban insurgents, is insufficient by itself to warrant proceedings against such vessel for violation of the neutrality law of the United States. (R. S., § 5281, *et seq.*)

Case of the Hornet, 13 Op., 541, *Akerman*, (1871.)

49. The papers presented by the Secretary of State in the case of the steamer *Virginus* do not establish any violation of the neutrality laws, either by the owners of the steamer or by the persons engaged thereon.

The Virginus, 14 Op., 49, *Bristow, acting*, (1872.)^{*}

50. It is not a violation of the neutrality laws of the United States to sell to a foreigner a vessel built in this country, though suited to be a privateer, and having some equipments calculated for war but frequently used by merchant ships.

Moodie vs. The Ship Alfred, 3 Dallas, 307.

51. Under article 19 of the treaty with France of 1778, (Pub. Trs., 209, annulled by act of 1798, 1 Stat., 578,) a French privateer has a right to make repairs in our ports. The replacement of her force is not an augmentation.

Moodie vs. The Ship Phæbe Anne, 3 Dallas, 319.

52. If a capture be made by a privateer which had been illegally equipped in a neutral country, the prize-courts of such neutral country have power, and it is their duty, to restore the captured property, if brought within their jurisdiction, to its owner.

Brig Alerta vs. Moran, 9 Cranch, 359.

53. Section 7 of the neutrality act of 1794 (1 Stat., 384, repealed) does not authorize the President to employ civil officers to make seizures.

Gelston vs. Hoyt, 3 *Wheaton*, 246.

54. A capture made within the neutral territory is, as between the belligerents, rightful; and its validity can only be questioned by the neutral state.

The Anne, 3 *Wheaton*, 435.

55. If the captured vessel commence hostilities upon the captor, she forfeits the neutral protection, and the capture is not an injury for which redress can be sought from the neutral sovereign.

Ib.

56. The treaty with Spain of 1795 (Pub. Trs., 706) requires restoration of captures in only two cases, piracy and captures in violation of our neutrality.

The Nuestra Señora de la Caridad, 4 *Wheaton*, 497.

57. In cases of violation of our neutrality by any of the belligerents, if the prize comes voluntarily within our territory, it is restored to the original owners by the courts.

La Amistad de Rues, 5 *Wheaton*, 385.

58. But their jurisdiction for this purpose, under the law of nations, extends only to restitution of the specific property, with costs and expenses during the pendency of the suit, and does not extend to the infliction of vindictive damages or compensation for plunderage, as in ordinary cases of marine torts.

Ib.

59. A capture of Spanish property, in violation of our neutrality, by a vessel built, armed, equipped, and owned in the United States, is illegal, and the property, if brought within our territorial limits, will be restored to the original owners.

La Concepcion, 6 *Wheaton*, 235.

60. The cases of *The Cassins* (3 Dallas, 121) and *The Invincible* (1 *Wheaton*, 238) decide that neither a public vessel of another nation, nor its officers, are liable to answer in our courts for a capture on the high seas; but do not touch the jurisdiction over her prizes lying in our ports, which extends to libels *in rem* for restitution of such prizes made in violation of our neutrality.

The Santissima Trinidad, 7 *Wheaton*, 283.

61. A foreign public vessel is exempted from the jurisdiction of our courts by an exception grounded on common usage and public policy; but this exception does not extend to her prizes, or captured goods landed here, which are liable to the jurisdiction of our courts for the purpose of inquiry and restitution, if a case therefor is made.

Ib.

62. There is nothing in our laws or in the law of nations that forbids our citizens from sending armed vessels, as well as munitions of war, to foreign ports for sale.

Ib., [340.]

63. An augmentation of the force of a foreign belligerent vessel in a port of the United States, we being neutral, by a substantial increase of her crew, is a breach of our neutrality.

Ib.

64. A capture made by a belligerent, whose force had been augmented in violation of our neutrality laws during the cruise immediately succeeding such violation, presents a case for restitution by our courts.

Ib.

65. It is firmly settled that, if captures are made by vessels which have violated our neutrality laws, the property may be restored if brought within our territory.

The Gran Para, 7 Wheaton, 471.

The Santa Maria, 7 Wheaton, 490.

The Monte Allegre, 7 Wheaton, 520.

66. This court has never decided that the offense (of fitting out, &c., in violation of the neutrality acts) adheres to the vessel, whatever changes may have taken place, and cannot be deposited at the termination of the cruise in preparing for which it was committed; and, as the *Irresistible* made no prize on her passage from Baltimore to the river La Plata, it is contended that her offense was deposited there, and that the court cannot connect her subsequent cruise with the transactions of Baltimore.

The Gran Para, 7 Wheaton, 471, [487.]

67. If this were to be admitted in such a case as this, the laws for the preservation of our neutrality would be completely eluded, so far as this enforcement depends on the restitution of prizes made in violation of them. Vessels completely fitted in our ports for military operations need only sail to a belligerent port, and there, after obtaining a commission, go through the ceremony of discharging and re-enlisting their crews to become perfectly legitimate cruisers, purified from every taint contracted at the place where all their real force and capacity for annoyance was acquired. This would, indeed, be a fraudulent neutrality, disgraceful to our own Government, and of which no nation would be the dupe. It is impossible for a moment to disguise the facts, that the arms and ammunition taken on board the *Irresistible* at Baltimore were taken for the purpose of being used on a cruise, and that the men there enlisted, though engaged, in form, as for a commercial voyage, were not so engaged in fact. There was no commercial voyage, and no individual of the crew could believe that there was one.

Ib.

68. If property captured in violation of our neutrality laws is found in the hands of the master of the capturing vessel, it is immaterial whether a condemnation has intervened, or what changes of title have occurred.

The Arrogante Barcelones, 7 *Wheaton*, 496.

69. Captures by vessels fitted out in the United States, in violation of neutrality, held illegal when the property is brought within our jurisdiction.

The Fanny, 9 *Wheaton*, 658, [668.]

70. Where a person was indicted under the third section of the act of 1818 (3 Stat., 448; R. S., § 5283) with being knowingly concerned in the fitting out of a vessel with intent to employ her in the service of a foreign people, viz, the United Provinces of Buenos Ayres, against the subjects of the Emperor of Brazil, with whom the United States are at peace: Held, that to bring the defendant within the act, either fitting out or arming will constitute an offense.

United States vs. Quincy, 6 *Peters*, 445.

71. It is not necessary that the vessel, when she left a port of the United States for a foreign port, and during her passage, and when she arrived at the foreign port, should be armed and in condition for hostilities, to constitute an offense.

Ib.

72. The preparations to commit hostilities must be made within the United States, and the intention with respect to the employment of the vessel must be formed before she leaves the United States.

Ib.

73. The law does not prohibit armed vessels belonging to citizens of the United States from sailing, it only requires the owners to give security. Collectors are not authorized to detain vessels built for warlike purposes and about to depart, unless circumstances render it probable that they are to be employed in violation of the act.

Ib.

74. A contract by an inhabitant of Texas to convey land in that country to citizens of the United States in consideration of advances of money made by them in the State of Ohio, to enable him to raise men and procure arms to carry on the war with Mexico, the independence of Texas not having been at that time acknowledged by the United States, was contrary to our national obligations to Mexico, violated the public policy of the United States, and cannot be specifically enforced by a court of the United States.

Kennett vs. Chambers, 14 *Howard*, 38.

75. An American citizen may, under the modern usage of nations, enter either the land or naval service of a foreign government without compromising the neutrality of his own.

The Santissima Trinidad, 1 Brockenbrough, 478.

76. It is not a crime, under the neutrality law, to leave this country with intent to enlist in foreign military service.

The United States vs. Louis Kazinski, 2 Sprague, 7.

77. It is not a crime to transport persons out of the country with their own consent who have an intention of so enlisting.

Ib.

78. To constitute a crime under the statute, such person must be hired or retained to go abroad with the intent to be so enlisted.

Ib.

79. Where an officer belonging to a military force ordered out by the President under the 8th section of the act of March 10, 1838, (5 Stat., 214,) and, instructed by his commanding officer, seized property as a precautionary measure, to prevent an intended violation of the act, that it might be detained until an officer having power to seize and hold it under the statute should arrive: Held the seizure was lawful.

Stoughton vs. Dimick, 3 Blatchford, 356.

80. The landing of a cargo contraband of war, on the shore of the country of one belligerent, at a point not blockaded, is not an act of hostility against the other belligerent.

The Florida, 4 Benedict, 452.

81. Section 6 of the neutrality act of 1818, (3 Stat., 449; R. S., § 5286,) punishing the offenses of beginning or setting on foot, or providing or preparing the means for a military expedition or enterprise for the invasion of a country with which the United States is at peace, is not violated without the commission of an overt or definite act.

United States vs. Lumsden, 1 Bond, 5.

82. If the means provided were procured to be used on the occurrence of a future contingent event, no liability is incurred under the statute.

Ib.

83. If the intention is that the means provided shall only be used at a time and under circumstances when they could be used without a violation of law, no criminality attaches to the act.

Ib.

NEUTRALS.

1. Belligerent ships of war, privateers, and the prizes of either, are entitled, on the score of humanity, to temporary refuge in neutral waters from casualties of the sea and land.

The President and prize, 7 Op., 122, Cushing, (1855.)

2. By the law of nations, belligerent ships of war, with their prizes, enjoy asylum in neutral ports for the purpose of obtaining supplies or undergoing repairs, according to the discretion of the neutral sovereign, who may refuse the asylum absolutely, or grant it under such conditions of duration, place, and other circumstances, as he shall see fit; provided, that he must be strictly impartial in this respect toward all the belligerent powers.

Id.

3. Where the neutral state has not signified its determination to refuse the privilege of asylum to belligerent ships of war, privateers, or their prizes, either belligerent has a right to assume its existence, and enter upon its enjoyment, subject to such regulations and limitations as the neutral state may please to prescribe for its own security.

Id.

4. The United States have not by treaty with any of the present belligerents bound themselves to accord asylum to either; but neither have the United States given notice that they will not do it; and, of course, our ports are open for lawful purposes to the ships of war of either Great Britain, France, Russia, Turkey, or Sardinia.

Id.

5. It is well known that a vessel libeled as enemy's property is condemned as prize if she act in such a manner as to forfeit the protection to which she is entitled by her neutral character. If, for example, a search be resisted, or an attempt be made to enter a blockaded port, the laws of war, as exercised by belligerents, authorize a condemnation as enemy's property, however clearly it may be proved that the vessel is in truth the vessel of a friend.

Maley vs. Shattuck, 3 Cranch, 488.

6. A vessel captured as prize of war is, while lying in the port of a neutral, still in the possession of the sovereign of the captor, and that possession cannot be rightfully divested.

Hudson vs. Guestier, 4 Cranch, 293, [295, 296.]

7. A neutral may lawfully ship his goods on board an armed belligerent vessel; and if force is used in a combat in which he gives no aid, his goods are not affected.

The Nereide, 9 Cranch, 368.

8. Neutral muniments, however regular and formal, if colorable only, do not affect belligerent rights.

The Rugen, 1 *Wheaton*, 61, [66.]

9. The capture of a neutral ship having enemy's property on board is a strictly justifiable exercise of the rights of war. It is no wrong done to the neutral, even though the voyage be thereby defeated. The captors are not, therefore, answerable *in pœnam* to the neutral for the losses which he may sustain by such lawful exercise of belligerent rights.

The Antonia Johanna, 1 *Wheaton*, 159.

10. An attempt has been made to distinguish this case from the ordinary cases of employment in the transport service of the enemy, upon the ground that the war of Great Britain against France was a war distinct from that against the United States, and that Swedish subjects had a perfect right to assist the British arms in respect to the former, though not to the latter. Whatever might be the right of the Swedish sovereign, acting under his own authority, we are of opinion that if a Swedish vessel be engaged in the actual service of Great Britain, or in carrying stores for the exclusive use of the British armies, she must, to all intents and purposes, be deemed a British transport. It is perfectly immaterial in what particular enterprise those armies might, at the time, be engaged; for the same important benefits are conferred upon an enemy, who thereby acquires a greater disposable force to bring into action against us. *Per Story*.

The Commercen, 1 *Wheaton*, 382.

[Chief-Justice Marshall strongly dissented from the application of this principle.]

11. The general rule that the neutral carrier of enemy's property is entitled to his freight, is now too firmly established to admit of discussion; but to this rule there are many exceptions. If the neutral be guilty of fraudulent or unneutral conduct, or has interposed himself to assist the enemy in carrying on the war, he is justly deemed to have forfeited his title to freight. Hence, the carrying of contraband goods to the enemy; the engaging in the coasting or colonial trade of the enemy; the spoliation of papers, and the fraudulent suppression of enemy's interests, have been held to affect the neutral with the forfeiture of freight; and in cases of a more flagrant character, such as carrying dispatches or hostile military passengers, an engagement in the transport service of the enemy, or a breach of blockade, the penalty of confiscation of the vessel has also been inflicted.

Ib.

12. That a belligerent may lawfully blockade the port of his enemy is admitted; but it is also admitted that this blockade does not, ac-

ording to modern usage, extend to a neutral vessel found in port, nor prevent her coming out with the cargo which was on board when the blockade was instituted.

Olivera vs. Union Insurance Co., 3 *Wheaton*, 194.

13. Where a neutral ship-owner lends his name to cover a fraud with regard to the cargo, this circumstance will subject the ship to condemnation.

The Fortuna, 3 *Wheaton*, 236.

14. Where a capture is made by captors acting under the commission of a foreign country, such capture gives them a right which no other nation neutral to them has a right to impugn, unless for the purpose of vindicating its own violated neutrality.

The Nereyda, 8 *Wheaton*, 108, [169.]

15. Neutrals may question the existence of a blockade, and challenge the legal authority of the party which has undertaken to establish it.

Prize cases, 2 *Black*, 635.

16. One belligerent engaged in actual war has a right to blockade the ports of another, and neutrals are bound to respect that right.

Ib.

17. A vessel and cargo, even where perhaps owned by neutrals, may be condemned as enemy property, because of the employment of the vessel in enemy trade, and because of an attempt to violate a blockade, and to elude visitation and search.

The Baigorry, 2 *Wallace*, 474.

18. A neutral who has resided in an enemy's country resumes his neutral rights as soon as he puts himself and his family *in itinere* to return home to reside; and he has a right to take with him the means of support for himself and his family in specie.

United States vs. Guillem, 11 *Howard*, 47.

19. Such property is not forfeited by a breach of blockade by the vessel on board of which he has taken passage, if he personally is in no fault.

Ib.

20. No trade honestly carried on between neutral ports, whether of the same or of different nations, can be lawfully interrupted by belligerents; but good faith must preside over such commerce; enemy commerce under neutral disguises has no claim to neutral immunity.

The Bermuda, 3 *Wallace*, 514.

21. Neutrals may establish themselves, for the purposes of trade, in ports convenient to either belligerent, and may sell or transport

to either such articles as either may wish to buy, subject to risks of capture for violation of blockade, or for the conveyance of contraband to belligerent ports.

Ib.

22. Goods of every description may be conveyed to neutral ports from neutral ports, if intended for actual discharge at a neutral port, and to be brought into the common stock of merchandise of such port; but voyages from neutral ports intended for belligerent ports are not protected in respect to seizure, either of ship or cargo, by an intention, real or pretended, to touch at intermediate neutral ports.

Ib.

23. Neutrals may convey to belligerent ports not under blockade whatever belligerents may desire to take, except contraband of war, which is always subject to seizure when being conveyed to a belligerent destination, whether the voyage be direct or indirect; such seizure, however, is restricted to actual contraband, and does not extend to the ship or other cargo, except in cases of fraud or bad faith on the part of the owners, or of the master with their sanction.

Ib.

24. Vessels conveying contraband cargo to belligerent ports not under blockade, under circumstances of fraud or bad faith, or cargo of any description to belligerent ports under blockade, are liable to seizure and condemnation from the commencement to the end of the voyage.

Ib.

25. A voyage from a neutral port to a belligerent port is one and the same voyage, whether the destination be ulterior or direct, and whether with or without the interposition of one or more intermediate ports; and whether to be performed by one vessel or several employed in the same transaction and in the accomplishment of the same purpose.

Ib.

26. Destination alone justifies seizure and condemnation of ship and cargo in voyage to ports under blockade; and such destination justifies equally seizure of contraband in voyage to ports not under blockade; but in the last case ship and cargo not contraband are free from seizure, except in case of fraud or bad faith.

Ib.

27. Frankness and truth are especially required of the officers of captured vessels when examined in preparation for the first hearing in prize.

28. The trade of neutrals with belligerents in articles not contraband is absolutely free, unless interrupted by blockade; the conveyance by neutrals to belligerents of contraband articles is always unlawful, and such articles may always be seized during transit by sea.

The Peterhoff, 5 Wallace, 28.

29. If a ship or cargo is enemy property, or if either be otherwise liable to condemnation, the circumstance that the vessel, at the time of the capture, was in neutral waters, would not, by itself, avail the claimants in a prize court. It might constitute a ground of claim by the neutral power, whose territories had suffered trespass, for apology or indemnity. But neither an enemy, nor a neutral acting the part of an enemy, can demand restitution of captured property on the sole ground of capture in neutral waters.

The Sir William Peel, 5 Wallace, 517.

The Adela, 6 Wallace, 266.

30. A *bona-fide* purchase for a commercial purpose by a neutral, in his own home port, of a ship of war of a belligerent that had fled to such port in order to escape from enemy vessels in pursuit, but which was *bona-fide* dismantled prior to the sale, and afterward fitted up for the merchant service, does not pass a title above the right of capture by the other belligerent.

The Georgia, 7 Wallace, 32.

31. A contract made by a consul of a neutral power with the citizen of a belligerent state that he will "protect" with his neutral name, from capture by the belligerent, merchandise which such citizen has in the enemy's lines, is against public policy, and void.

Coppell vs. Hall, 7 Wallace, 542.

32. The question of prize or no prize belongs exclusively to the courts of the captor; and in no case does a neutral assume the right of deciding it.

But offenses may be committed by a belligerent against a neutral, in his military operations, which it would be inconsistent with the neutral character to permit, and which give to the other belligerent, the party injured by those operations, claims upon the neutral which he is not at liberty to disregard. In such a situation, the neutral has a double duty to perform: he must vindicate his own rights, and afford redress to the party injured by their violation.

If the wrong-doer comes completely within the power of the neutral, the practice of this Government is to restore the thing wrongfully taken.

The Santissima Trinidad, 1 Brockenbrough, 478.

33. Whether a neutral, within the territory of one belligerent, commits a crime against that belligerent by intercourse with the enemy, must depend on the nature of that intercourse.

Bas vs. Steele, 3 Washington, 381.

34. The law of nations does not prohibit the carrying of enemies' goods in neutral vessels; so far from so doing, upon the condemnation of the goods, the vessel is entitled to freight.

But if a neutral endeavors, by false appearances, to cover the property of a belligerent from the lawful seizure of his enemy, such conduct identifies the neutral with the belligerent whom he thus endeavors to protect, and is a fraud on the neutrality of his own government, and upon the rights of the belligerent.

Schwartz vs. Ins. Co. of N. America, 3 *Washington*, 117.

35. If there be a house of trade established in the enemy's country, the property of all the partners in the house is condemnable as prize, notwithstanding some of them have a neutral residence. But such connection will not affect the other separate property of the partners having a neutral residence.

The San José Indiano, 2 *Gallison*, 268.

NEUTRAL TERRITORY.

1. Delaware Bay within the capes is a part of the territory of the United States, and, therefore, as between foreign belligerents, is neutral territory.

The Grange, 1 *Op.*, 32, *Randolph*, (1793.)

2. To attack an enemy in neutral territory is absolutely unlawful.

Ib.

3. The seizure of a ship in neutral waters by an enemy being unlawful, the duty arising from the illegal act is restitution.

Ib.

4. Every nation has exclusive jurisdiction over the waters adjacent to its shores to the distance of a cannon-shot or marine league.

The brig Ann, 1 *Gallison*, 62.

OATHS.

See *Claims*.

OFFICE.

1. Where an act of Congress gives the President the power to appoint an officer, without defining the tenure by which the office is to be held, a commission may legally issue to the officer to hold the office during the pleasure of the President.

Case of the register of wills, 1 *Op.*, 212, *Wirt*, (1818.)

2. The President has power, during recesses of the Senate, to fill vacancies that may happen to exist in the subordinate offices of the Government, and is not limited in its exercise to those which occur during recesses.

It was the intention of the Constitution that the offices created by law, and which are necessary to the current operations of the Government, should always be full, and that, when vacancies happen, they shall not be protracted beyond the time necessary for the President to fill them.

Vacancies, power of the President to fill, 2 Op., 525, Taney, (1832.)

3. In case of appointments and removals by the President, where the removal is not by direct discharge, or an express vacating of the office by an independent fact, but merely by the operation of a new commission or appointment, then the virtue of the old commission ceases only when notice of the new commission is given to the outgoing officer, either by the President or by the new officer exhibiting his commission to the old, or by other sufficient notification.

Case of chief-justice of New Mexico, 6 Op., 87, Cushing, (1853.)

4. The tender of his resignation by an officer while insane is a nullity, and may be so treated by the appointing officer, when satisfactory evidence of such insanity is laid before him, although, in ignorance of it, he had accepted the resignation.

Kavanagh's case, 10 Op., 229, Bates, (1862.)

5. The office of minister to Venezuela passed into "abeyance" under section 3 of the act, 1867, (14 Stat., 430; R. S., § 1769,) by the adjournment of the Senate on 27th July, 1868, without having acted on the nomination of Mr. Stilwell thereto, made to that body on 28th January, 1868.

The minister to Venezuela, 12 Op., 457, Evarts, (1868.)

6. Whether an office subsists and is vacant, or the office itself is abrogated, while the predicament of "abeyance" continues, is a question of verbal rather than of substantial distinctions.

Ib.

7. A person holding two compatible offices or employments under the Government is not precluded from receiving the salaries of both.

Browning's case, 12 Op., 459, Evarts, (1868.)

8. The act of 1850 (9 Stat., 542) precludes an officer who may perform, under an *ad interim* authority, the duties of another office, in which a vacancy exists, from receiving the compensation or salary provided for both offices.

Ib.

9. In such a case, the *ad interim* officer is not invested with a new office, but he is merely required to perform new duties.
Ib.
10. The "tenure-of-civil-office act" does not prolong the term of any office beyond that limited by law.
Case of a district attorney, 12 Op., 469, Exarts, (1868.)
11. Where the office of district attorney became vacant by expiration of the statutory term during a session of the Senate, and the Senate adjourned without acting on the nomination made by the President to the office: Held, that the President had power, after the adjournment of the Senate, to grant a commission to fill the vacancy, to expire at the end of the next session of the Senate.
Ib.
12. Consistently with the spirit and purpose of the tenure-of-office acts of 1867 (14 Stat., 430; R. S., § 1767, *et seq.*) and 1869 (16 Stat., 6; R. S., § 1767, *et seq.*) the President may revoke the suspension of an officer and re-instate him in the functions of his office, after the rejection by the Senate of a nomination to fill his place.
Re-instating suspended officer, 13 Op., 221, Hoar, (1870.)
13. The word "suspended," as used in those acts, imports that the person suspended is still the incumbent of the office, and that the interruption of his performance of its duties is temporary and provisional.
Ib.
14. The effect of revoking the suspension is only to restore to his former condition the actual possessor of the office, to whose removal the Senate has given no advice or consent.
Ib.
15. Semble, that in the case of a foreign mission, the holder of the office is not displaced by the appointment of a successor until the latter enters upon his duties.
George H. Yeaman's case, 13 Op., 300, Akerman, (1870.)
16. Under the tenure-of-office acts (which, in this opinion, are assumed to be applicable to foreign ministers and consuls, though this is regarded as doubtful upon authority, and perhaps on principle also) the President may suspend the incumbent of such mission until the end of the next session of the Senate, and designate some suitable person to perform the duties of the suspended officer in the mean time.
Ib.
17. Where an officer, during the recess of the Senate, was suspended, and another person was designated to fill the office till the end of the next session of the Senate, who was afterward nominated

for the office during such session, but the Senate adjourned without acting upon the nomination: Held, that the failure of the Senate to confirm the nomination operated to restore the suspended officer; yet held, also, that the latter may again be suspended by the President for any causes which, in his judgment, are sufficient, without regard to the time when such causes began to exist.

Ib.

18. An officer who has been suspended and is afterward re-instated, may be again suspended by the President during the recess of the Senate.

Postmaster at Nashville, 13 Op., 308, Akerman, (1370.)

19. A resignation of a public office may be effected by the concurrence of the officer and the appointing power; its essential elements being an intent to resign, on one part, and an acceptance on the other. The principle on which it rests is agreement.

A. B. Cornell's case, 14 Op., 259, Williams, (1373.)

20. When a resignation once takes effect, the official relations of the incumbent are dissolved, and he no longer has any right to or hold upon the office.

Ib.

21. The right of an incumbent of a Government office to continue therein, after the expiration of his term, until the appointment of his successor, depends upon whether Congress has thus provided. Opinion of Attorney-General Butler, (2 Op., 713,) disapproved.

Ib.

22. An order of the President, under section 1768 of the Revised Statutes, suspending an officer, takes effect upon due notice to the officer of such suspension, and receipt of such order by the officer is due notice. If the order does not in terms limit the time at which it is to take effect, it operates from the date of its service.

Suspension of officer, — Op., Williams, November 20, (1375.)

23. If an officer thus suspended continues to perform the duties and functions of his office, there being no one else authorized at the time to perform them, his acts are the acts of an officer *de facto*, which, on grounds of public policy and necessity, are deemed to be valid so far as they involve the just interests of third persons and the public; and such acts of a *de facto* officer, acting within the scope of his office, are valid and binding in the absence of fraud or notice of irregularity.

Ib.

24. On the 17th February, 1876, General Schenck tendered his resignation as minister to London, to take effect on the arrival of his successor. Before his letter of resignation arrived, and on the 21st February, 1876, he sent a telegram asking leave of absence to repair to Washington, which leave was given on 23d February. On March 6 the Secretary of State wrote that General Schenck's resignation was accepted. Before this letter reached London General Schenck was on his way to Washington. On 17th February the name of Mr. Dana was sent to the Senate as successor to General Schenck, the message stating that the nomination was in place of General Schenck, "resigned."

Held, that when the resignation of such an officer of the Government is tendered, and the time at which it is to take effect is specifically named in the resignation, the acceptance of the resignation without qualification is an acceptance with the condition attached.

Schenck's case, — Op., Pierrepont, April 12, (1876.)

25. If General Schenck had remained in England he would have continued to be minister until the arrival of his successor; but his having subsequently obtained leave of absence, and having returned in pursuance of that leave, changed the conditions. He would cease to be minister on the nomination and confirmation of his successor.

Ib.

26. The nomination to an office by the President, confirmation by the Senate, signature of the commission, and affixing to it the seal of the United States are all the acts necessary to render the appointment complete. Hence, the appointment is not rendered invalid by the subsequent death of the President before the transmission of the commission to the appointee, even where it is necessary that the person appointed should perform certain acts before he can legally enter upon the duties of the office.

United States vs. Le Baron, 19 Howard, 74.

27. An officer commissioned to hold office during the term of four years from the 2d March, 1845, is in office on 2d March, 1849. The word "from" excludes the day of date.

Best vs. Polk, 18 Wallace, 112, [119.]

28. A civil officer has a right to resign his office at pleasure, and to take effect it is only necessary that the resignation should be received by the Executive. Its acceptance or rejection by him is unimportant.

United States vs. Wright, 1 McLean, 509.

OFFICIAL ACTS.

1. The acts of an officer *de facto* are always held to be good where the public or third parties are concerned, and the legality of his appointment can never be inquired into except upon *quo warranto*, or some other proceeding to oust him, or else in a suit brought or defended by himself which brings the very question whether he was an officer *de jure* directly in issue.

Mr. Hooper's case, 9 Op., 432, Black, (1860.)

OFFICERS OF GOVERNMENT.

See *Contracts*.

1. Where a statute declares that an officer shall be removed in certain contingencies, the happening of the contingency does not effect the removal, and, until actual removal, the liability of the sureties on the official bond is not determined.

United States vs. Van Zandt, 11 Wheaton, 184.

United States vs. Nicholl, 12 Wheaton, 505.

2. Every public officer is required to perform all duties which are strictly official, although they may be required by laws passed after he comes into office, and may be cumulative upon his original duties, and although his compensation therefor be wholly inadequate.

Andrews vs. United States, 2 Story, 202.

3. Where a particular authority is confided in a public officer, to be exercised, in his discretion, upon an examination of facts of which he is the appropriate judge, his decision upon those facts is, in the absence of any controlling provision, absolutely conclusive.

Allen vs. Blunt, 3 Story, 742.

PANAMA PASSENGER TAX.

See *Treaties*.

Claims.

PARDONS.

1. The President may so far mitigate a sentence of death as to substitute a milder punishment in its stead.

Bansman's case, 1 Op., 327, Wirt, (1820.)

2. The power of absolute pardon given to the President by the Constitution includes the power of granting a conditional pardon;

there is danger, however, that conditional pardons may result in absolute ones, from the difficulty of enforcing the condition after an offender shall have been released. Pardons may issue before conviction.

Power of pardon, 1 Op., 342, Wirt, (1820.)

3. The power of pardon neither requires nor authorizes the President to enter into an investigation of facts not set up or proven at the trial, which, if true, should have been interposed during the proceedings against the accused.

Case of certain pirates, 1 Op., 359, Wirt, (1820.)

4. The President has power to grant a conditional pardon to a convict, provided the condition be compatible with the genius of our Constitution and laws.

Bryant's case, 1 Op., 482, Wirt, (1821.)

5. The pardoning power includes the power of remission of fines, penalties, and forfeitures under the revenue laws, but does not extend to the length of making restitution of fines, penalties, and forfeitures after they have been paid into the Treasury.

Case of Adams and others, 2 Op., 329, Berrien, (1830.)

6. The power of the President to grant reprieves and pardons extends to the remission of fines, penalties, forfeitures, and costs in criminal cases, and may be exercised in degrees, at different times, in the discretion of the President.

Martin's case, 3 Op., 418, Grundy, (1839.)

7. A portion of a sentence may be remitted at one time, and another portion at another time and by another President.

Ib.

8. An appointment of an officer under a sentence of suspension to a higher office is an implied pardon.

Hooe's case, 4 Op., 8, Legaré, (1842.)

9. The President has ample power to mitigate the sentence of a court-martial by commuting a sentence of dismissal from the service to suspension without pay or emolument for a limited time.

Guillon's case, 5 Op., 43, Toucey, (1848.)

10. The opinions of former Attorneys-General are not at variance with this view.

Ib.

11. Where several midshipmen had been dismissed by the sentence of a naval court-martial, which was approved by President Taylor, who afterward reconsidered his approval, and announced his determination to restore them, but died without doing so, held, it was competent for the President to reconsider the case and restore them, provided it could be done without increasing that class of officers beyond the number limited by law.

Case of dismissed midshipmen, 5 Op., 259, Crittenden, (1850.)

12. The general power to pardon conferred upon the President includes the power to pardon conditionally, or to commute to a milder punishment. Where, however, the condition is such that the Government has no power to carry it into effect, the pardon will be, in effect, unconditional.
Case of an Indian, 5 Op., 368, Crittenden, (1851.)
13. It is not competent for the President, in the exercise of the pardoning power, to remit pecuniary penalties attached to the offense, unless those penalties accrue to the United States.
Drayton and Sears's case, 5 Op., 532, Crittenden, (1852.)
14. The President, in the exercise of the pardoning power vested in him, may remit penalties and fines, or he may discharge the parties from imprisonment without remitting the fines.
Drayton and Sears's case, 5 Op., 579, Crittenden, (1852.)
15. The President has power to order a *nolle prosequi* in any stage of a criminal proceeding in the name of the Government.
Power of the President, 5 Op., 729, Appendix, Wirt, (1821.)
16. The President has the constitutional power to pardon as well before trial and conviction as afterward, but it is a power to be exercised with reserve, and for exceptional considerations.
John Sandford's case, 6 Op., 20, Cushing, (1853.)
17. The pardoning power of the President extends to all cases of penalties and forfeitures, as well as other punishments provided by law.
Raymond's case, 6 Op., 293, Cushing, (1854.)
18. The power of the President and of the Secretary of the Treasury to pardon and remit forfeitures or penalties under the acts of Congress relative to the transportation of passengers considered.
The Bellona, 6 Op., 488, Cushing, (1854.)
19. An order to an officer, while under sentence of suspension, to attend a court-martial as a witness, does not operate as a constructive pardon.
Lieutenant Stanley's case, 6 Op., 714, Cushing, (1854.)
20. The President alone has power to pardon offenses committed in a Territory in violation of acts of Congress.
Pardoning power, 7 Op., 561, Cushing, (1855.)
21. The President has no power by a supplemental or special pardon to relieve a Federal convict of legal or political disabilities imposed upon him by the laws of one of the States.
Robbins's case, 7 Op., 760, Cushing, (1856.)
22. Where a person had been convicted of an offense created by act of Congress and imprisoned therefor in the penitentiary, and after-

ward received a general pardon, held, that if any other act or thing was necessary under the laws of the State of New York to restore him to citizenship, it was not within the province of the President to perform it.

Ib.

23. The constitutional power of the President to pardon extends to all the elements of the subject-matter, including as well pecuniary penalties as other methods of punishment for any Federal offense, except in a case of impeachment, and it cannot be controlled or curtailed by act of Congress.

Gourd's case, 8 Op., 281, Cushing, (1857.)

24. But where a pecuniary penalty has been paid into the Treasury, the amount cannot be drawn without an appropriation by Congress.

Ib.

25. A person disfranchised as a citizen by conviction of crime under the laws of the United States can be restored to his rights by a pardon issued before or after he has suffered the other penalties incident to his conviction.

Effect of pardon, 9 Op., 478, Black, (1860.)

26. The remission of a fine by the President after it has been paid is of no effect.

Smith's case, 10 Op., 1, Stanton, (1861.)

27. The power of the President to pardon offenses against the Government does not embrace any case of forfeiture, loss, or condemnation not imposed by law as a punishment for the offense. He cannot, by virtue of the grant of power to pardon, surrender or give away the pecuniary or proprietary rights and interests of the Government.

Case of blockade-runners, 10 Op., 452, Bates, (1863)

28. After condemnation of a vessel and cargo in a prize court, the President cannot remit the forfeiture and restore the property.

Ib.

29. Where a fine was imposed upon a person on conviction for crime against the Government, but the sentence was not enforced during the life-time of the party, held, the President had power to remit the fine after death.

Caldwell's case, 11 Op., 35, Bates, (1864.)

30. The pardoning power of the President considered.

Pardoning power, 11 Op., 227, Speed, (1865.)

31. The President cannot, by any exercise of his pardoning power, remit or mitigate the forfeiture of property liable to confiscation as prize of war.

The Adeldo, 11 Op., 445, Speed, (1866.)

32. The effect and operation of pardons considered.

President's power, 12 *Op.*, 81, *Stanbery*, (1866.)

33. A pardon by the President will restore an officer whose rank has been reduced by sentence of court-martial to his former rank, according to the date of his commission.

Effect of pardon, 12 *Op.*, 547, *Evarts*, (1869.)

34. The President may act on applications for pardon individually, or may refer them to any of the Executive Departments for advice.

Reynolds's case, 14 *Op.*, 20, *Williams*, (1872.)

35. Where a person convicted of crime against the Government was sentenced to fine and imprisonment, and subsequently received an unconditional pardon from the President, and previous thereto had paid the amount of the fine to the marshal, by whom it was deposited in court, where it still remained, held, that the fine was remitted by the pardon, and that the money should be restored to the person pardoned.

Charles Leoni's case, 14 *Op.*, 599, *Williams*, (1872.)

36. It seems that a pardon by the President restores pecuniary penalties paid to an officer of the Government, unless the money has actually passed into the Treasury.

Ib.

37. The President may grant a conditional pardon, or commutation of sentence.

Ex parte Wells, 18 *Howard*, 307.

United States vs. Wilson, 7 *Peters*, 150.

38. The power which the Constitution confers upon the President to grant pardons cannot be controlled or limited in any manner by Congress.

Ex parte Garland, 4 *Wallace*, 333.

39. A pardon reaches the punishment prescribed for an offense and the guilt of the offender, and, when full, releases the punishment and blots out of existence the guilt. If granted before conviction, it prevents any of the penalties and disabilities consequent upon conviction from attaching; when granted after conviction, it removes the penalties and restores the person to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity.

Ib.

40. There is only a single limitation to the operation of this power: it does not restore offices forfeited, or property vested in others in consequence of the conviction and judgment.

Ib.

41. The pardon of the President, whether granted by general proclamation or by special letters, relieves claimants, under the captured and abandoned property act, from the consequences of participation in the rebellion.

Carlisle vs. United States, 16 *Wallace*, 147.

42. There has been no difference of opinion among the members of the court as to the effect and operation of a pardon. In cases where it applies, all have agreed that the pardon not merely releases the offender from the punishment prescribed for the offense, but that it obliterates, in legal contemplation, the offense itself.

Ib.

43. The constitutional power of the President to pardon offenses carries with it, as an incident, the power to release penalties and forfeitures which accrue from the offense, subject to the exceptions prescribed in the pardon.

Osborn vs. United States, 91 *U. S. R.*, *S. C.*, 474.

44. A pardon of the President restores all rights of property lost by the offense pardoned, unless the property has, by judicial process, become vested in some other person.

Ib.

45. Under the Constitution and laws of the United States, a pardon must be regarded as a deed, to the validity of which delivery is essential; and in this respect a pardon differs from a commission.

In the matter of De Puy, 3 *Benedict*, 307.

46. A pardon is not completed in such a sense that it cannot be revoked by the President, until it has been actually delivered to the prisoner, or fully issued and delivered to the keeper of the prison in which he is confined, with intent that it should become available to the prisoner. It may be revoked by the President by whom it was issued, or by his successor, while it yet remains in the marshal's hands. The marshal is in this respect no more than the messenger of the President. Delivery of the pardon to the prisoner, or to the person having him in custody, is essential to render it operative.

Ib.

47. Where a pardon is granted with a condition annexed, the fact that the person pardoned is imprisoned and must accept the condition before receiving the benefit of the pardon, does not constitute such duress as makes the acceptance of the condition of no effect.

Greathouse's case, 2 *Abbott*, *U. S. R.*, 382.

48. He who claims the benefit of a pardon must strictly comply with its conditions and make proof of that fact.

Haym vs. United States, 7 *C. Cls.*, 443.

Waring vs. United States, 7 *C. Cls.*, 501.

Scott vs. United States, 8 *C. Cls.*, 467.

PARIS EXPOSITION.

1. The Secretary of State has authority, under the joint resolution of 5th July, 1866, (14 Stat., 362,) to pay the moneys appropriated for the Paris Exposition, to be expended in Europe, in coin.

Expenditures for Exposition, 12 Op., 9, Stanbery, (1866.)

PASSPORTS.

1. A passport issued by an unauthorized person substantially in the form used by the State Department, is within the letter of section 23 of the act of 1856. (11 Stat., 60; R. S., § 4078.)

Case of a paseport issued by mayor of Philadelphia, 9 Op., 350, Black, (1859.)

2. The prohibition contained in that act is not confined to the issuing and verifying of such passports or certificates in foreign countries, but applies equally to State and Federal functionaries residing here.

Ib.

3. A passport cannot be issued to any other than a citizen of the United States.

Ib.

4. There is no form of certificate in the nature of a passport which can be issued lawfully by a State officer.

Ib.

5. By the act of March 3, 1863, (12 Stat., 754, repealed 14 Stat., 54,) the Secretary of State had power to issue passports to any class of persons liable to military duty by the laws of the United States.

Passports, 10 Op., 517, Bates, (1863.)

6. Where application was made to the Department of State for passports for five persons residing in the island of Curaçoa, four of whom were born in that island and one in the island of Saint Thomas, and all of whom were children of native citizens of the United States, but it did not appear that any of the applicants had ever resided or intended to reside in the United States, advised that the applicants are not entitled to passports.

Case of five residents of Curaçoa, 13 Op., 89, Hoar, (1869.)

7. Semble, that the granting of passports is not obligatory in any case, but is only permitted where not prohibited by law.

Ib.

8. Persons born abroad, who seek passports as citizens of the United States founded on an alleged Texan citizenship at the time of annexation, may be deemed citizens of the United States and en-

titled to passports as such, should they be found to belong to any of the classes of Texas citizens described and classified in the opinion.

Citizens of Texas, 13 Op., 397, *Akerman*, (1871.)

9. In general, a passport granted by the Secretary of State is not evidence in a court of justice that the person to whom it was given was a citizen of the United States.

Urtetiqui vs. D'Arbel, 9 *Peters*, 692.

PAYMENT IN COIN.

See *Treaties*—*Peru*.
Spain.

1. The Secretary of State has authority, under the joint resolution of 5th July, 1866, (14 Stat., 362,) to pay the moneys appropriated for the Paris Exposition, to be expended in Europe, in coin.

Paris Exposition, 12 Op., 9, *Stanbery*, (1866.)

PENALTIES AND FORFEITURES.

See *Pardons*.

1. On the requisition of the British minister, a British vessel and cargo which the master had wantonly and feloniously taken into an American port in violation of our revenue laws, and which was there seized by the officers of the port for such violation, should be restored to an innocent owner. The forfeitures and penalties prescribed by our laws have never been inflicted on owners of vessels which have been brought within our power by crimes of others.

Case of the Maria, 1 Op., 509, *Wirt*, (1821.)

2. The jewels of the Princess of Orange, stolen from her, having been brought into this country in violation of our revenue laws, but without the consent of the owner, are not liable to forfeiture, and may be restored to the minister of the King of the Netherlands by order of the President.

Jewels of the Princess of Orange, 2 Op., 482, *Taney*, (1831.)

PERMANENT APPROPRIATIONS.

See *Appropriations*.

PIRACY.

See *Crimes*.

POWERS OF ATTORNEY.

1. A power of attorney, not given on account of any valuable consideration paid to the principal, may be revoked before the exercise of authority under it.

Sombrero Island, 9 Op., 123, Black, (1857.)

PRESENTS.

See Contingent Expenses of Foreign Intercourse.

PRINCESS OF ORANGE.

See Jewels of the Princess of Orange.

PRISONERS.

*See Consular Courts.
Crimes.*

PRIVILEGE FROM ARREST.

*See Foreign Consuls.
Public Ministers.
Servants.*

1. The late governor of Guadaloupe, while here as a prisoner of war on parole, is not more exempt than any other foreigner (not a public minister) from suit and arrest.
Case of the governor of Guadaloupe, 1 Op., 45, Bradford, (1794.)
2. A British naval officer proceeded against in a civil action by a citizen of Charleston for having received a negro on board his vessel during the war, the property of the plaintiff, is on the same footing with every other foreigner who is not a public minister, as to privilege from arrest and suit. The suit cannot be stopped on the application of the minister of Great Britain.
Captain Cochran's case, 1 Op., 49, Bradford, (1794.)
3. If the commandant of the island of Amelia were arrested in Georgia at the suit of an individual, the United States have no power to interfere; if, however, the suit be a public prosecution in the name of the State of Georgia, or of the United States, it would be proper for the Executive to interfere.

Rosa's case, 1 Op., 68, Loe, (1797.)

PRIZE.

*See Capture and Prize.
Neutrality.*

PRIVATEERS.

1. A privateer's commission may be forfeited by grossly illegal conduct; and a commission fraudulently obtained is, as to vesting the interests of prize, utterly void. But a commission may be lawfully obtained, although the parties intended to use it as a cover for illegal purposes. If a commission is fairly obtained, without imposition or fraud upon the officers of Government, it is not void merely because the parties privately intend to violate, under its protection, the laws of their country. A collusive capture conveys no title to the captors, not because the commission is thereby made void, but because the captors thereby forfeit all title to the prize-property.

The Experiment, 8 Wheaton, 261, [265.]

2. A nation at war may commission private armed vessels to carry on war against its enemy on the high seas, and the commission will afford protection, even in the judicial tribunals of the enemy, against a charge of the crime of robbery or piracy.

United States vs. Baker, 5 Blatchford, 6.

PROCLAMATION.

1. Where a proclamation by the President, removing certain restrictions upon trade and intercourse growing out of the rebellion, bore date upon the 24th day of June, 1865, (13 Stat., 769,) and was sealed with the great seal, and duly attested, but was not published in the newspapers or otherwise made public until the morning of the 27th, and the decision of the case turned upon the date at which the proclamation became effective: Held, by the Chief-Justice and four associate justices, that the same rule of presumption should be applied to proclamations as was applied to statutes; and that the proclamation should be deemed to have a valid existence and to be effective on the day of its date.

Lapeyre vs. United States, 17 Wallace, 191.

[The dissenting justices were of opinion that some acts were necessary other than signature and deposit in the Department of State to give to the paper the validity of a proclamation.]

PROPERTY OF THE UNITED STATES.

1. Property of the United States transferred by rebel authorities in the hands of persons within the jurisdiction of a friendly foreign state may be recovered by appropriate judicial proceedings instituted by the United States in the courts of the foreign government.

Recovery of United States property, 11 Op., 292, Speed, (1865.)

PROSECUTIONS.*See Treaties.*

1. The term "prosecutions," as used in treaty of 1782 with Great Britain, article 6, (Pub. Trs., 263,) defined.

*Captain Cochran's case, 1 Op., 50, Bradford, (1794.)***PUBLIC ARMED VESSELS.***See Exterritoriality.**Illicit Intercourse.**Seizure and Detention.*

1. Public armed vessels may seize and detain merchant-vessels suspected of being engaged in illicit trade forbidden by the laws of Congress.

*The Ontario and the Thomas, 3 Op., 405, Grundy, (1839.)***PUBLIC CONTRACTS.***See Contracts.***PUBLIC ENEMY.***See Illicit Intercourse.***PUBLIC MINISTER.***See Resignation of office.*

1. The arrest (of servants of public ministers) is regulated by act of Congress; entering a public minister's house to serve an execution will either be absorbed in the arrest, as being necessarily associated with it, if that be found criminal, or, if an arrest be admissible, must be punished, if at all, under the law of nations.

Case of Van Berokel's servant, 1 Op., 26, Randolph, (1792.)

2. A consul is not a public minister.

Case of British consul at Norfolk, 1 Op., 41, Bradford, (1794.)

3. Even the house of a foreign minister cannot be made an asylum for a guilty citizen, nor it is apprehended a prison for an innocent one. And, though it be exempt from the ordinary jurisdiction of the country, yet, in such cases, recourse would be had to the interposition of the extraordinary power of the state.

Case of American citizen on British ship, 1 Op., 47 Bradford, (1794.)

4. Any malicious publication tending to render another ridiculous, or to expose him to public contempt and hatred, is a libel; and in the case of a foreign public minister the municipal law is strengthened by the law of nations, which secures the minister a peculiar protection, not only from violence but also from insult.

Case of British minister, 1 Op., 52, Bradford, (1794.)

5. An affront to an ambassador is just cause for national displeasure, and, if offered by an individual citizen, satisfaction is demandable of his nation. It is usual for nations to complain of insults to their ambassadors, and to require the parties to be brought to punishment.

Spanish minister's case, 1 Op., 71, Lee, (1797.)

6. An ambassador or other representative of one nation residing in another is entitled to be treated with respect, and especially ought not to be libeled by any of the citizens. If he commits any offense, it belongs, in our country, to the President to take notice of it, and not to any individual citizen.

Ib.

7. A foreign minister should correspond with the Secretary of State on matters which interest his nation, and not through the press of our country. He has no authority to communicate his sentiments to the people of the United States by publication in manuscript or print.

Spanish ministers' publication, 1 Op., 74, Lee, (1797.)

8. The entry into a minister's garden by the agent of the owner of a slave, and there seizing and carrying away to the owner such slave, is not such a violation of the domicile of the minister as constitutes a punishable offense under the Crimes Act of 1790. (1 Stat., 118; R. S., § 4064.)

Mr. Merry's case, 1 Op., 141, Lincoln, (1804.)

9. Mr. Barozzo Pereira, the Portuguese chargé d'affaires, was, on the 30th October, 1829, entitled to the respect and immunities of a public minister, notwithstanding the assumption of regal power in Portugal by Don Miguel, in exclusion of Don Pedro IV.

Case of Portuguese minister, 2 Op., 290, Berrien, (1829.)

[NOTE.—The chargé d'affaires appointed by Don Miguel commenced an action in trover in the State court against the late chargé to recover the archives and property of the legation, and the late chargé was arrested and imprisoned in default of bail. On a motion to quash the process it was held:

1. That the recognition of a foreign minister is conclusive evidence of the authenticity and validity of his credentials.
2. Where a diplomatic representative announces the cessation of his functions by reason of a change of authority in his country,

and obtains his passports, he has not waived his privilege as a returning minister, and the process should be quashed.

3. Such a suit, as in this case, is no evidence that the sovereign has deprived the chargé of his privilege, even if it were competent so to do. *Torlade vs. Barrozo*, 1 Miles, (Pa.,) 366.

[The attorney who issued the *capias* was thereupon indicted under the act of Congress and tried in the Federal court. The case went to the Supreme Court of the United States on a difference of opinion, and a *nolle prosequi* was entered by direction of the President. *United States vs. Phillips*, 6 Peters, 776.]

10. The persons and household goods of foreign ambassadors, and of those who are attached to their respective legations, are exempt from lawful arrest, seizure, or molestation, as well by the law of nations as by the act of 1790, section 28, (1 Stat., 118; R. S., § 4062.)

It is, therefore, unlawful for the keeper of a hotel in Washington, with whom an attaché of the legation of France is a boarder, to oppose by force, in any manner, the removal therefrom of any of his personal effects.

Case of Jules Marie, 5 Op., 69, Toucey, (1849.)

11. Yet it is not incumbent on the Secretary of State to interfere in such cases. The act of Congress, which denounces the act and prescribes the penalty, refers them to the judiciary.

Id.

12. The question of what redress could be afforded for an insult to a foreign government, offered to its minister considered.

Spanish minister's case, 5 Op., 691, *Appendix*, Lincoln, (1802.)

13. A foreign minister who engages in the enlistment of troops here for his government is subject to be summarily expelled from the country, or, after demand of recall, dismissed by the President.

Mr. Crampton's case, 7 Op., 367, Cushing, (1855.)

14. According to the public law of the monarchies of Europe, the authority of ministers, and perhaps of international commissioners, expires on the death, deposition, or abdication of the prince; but not so as between the American republics, in which the executive power is permanent and continuous, without regard to the governing person, and there is no interruption of the authority or renewal of the credentials of their public ministers on a change of President for whatever cause, provided such President continues to represent and exercise the appointing power of the government.

Case of ministers, &c., of American Republics, 7 Op., 532, Cushing, (1855.)

15. The United States observe, as their rule of public law, to recognize governments *de facto*, and also governing persons *de facto*, without scrutiny of the question of the legitimacy of origin or succession.

Id.

16. Where a person was accredited as a foreign minister to the United States, and not received as representing no recognized government, and against whom a warrant was issued for unlawful recruiting: held, that he had no diplomatic privilege of right, and that whatever privilege was accorded to him by courtesy would be withdrawn as soon as there shall be cause to believe that he is engaged in or contemplates any act inconsistent with the laws, the peace, or the public honor of the United States.

French's case, 8 Op., 473, *Cushing*, (1855.)

17. If a slave employed by the representative of a foreign government, without the owner's authority, be reclaimed by the owner with or without legal process, such reclamation is not a breach of diplomatic privilege.

Chevalier Hulsemann's servant, 9 Op., 7, *Black*, (1857.)

18. For injuries done by private persons to the representatives of foreign governments, the Government of the United States affords redress through its judicial tribunals. The Executive Department has no power to redress such injuries.

Ib.

19. In what cases a minister, by infracting the laws of the country in which he resides, may subject himself to other punishments than those inflicted by his own sovereign, is an inquiry foreign to the present purpose. If his crimes be such as to render him amenable to local jurisdiction, it must be because they forfeit the privileges annexed to his character; and the minister, by violating the conditions under which he was received as the representative of a foreign sovereign, has surrendered the immunities granted on those conditions; or, according to the true meaning of the original assent, has ceased to be entitled to them.

Schooner Exchange vs. McFaddon, 7 Cranch, 116, [139.] *

20. It is admitted that a claim by a public minister in behalf of his sovereign would be good; but in making this admission it is not to be understood that it can be made in a court of justice without the assent or sanction of the government in whose courts the cause is pending. That is a question of great importance, upon which this court expressly reserve their opinion.

The Anne, 3 Wheaton, 435, [446.]

21. An indictment under the act of 1790, (1 Stat., 118, R. S. § 4062,) for offering violence to the person of a public minister is not a case "affecting ambassadors or other public ministers and consuls," within the second section of the third article of the Constitution.

United States vs. Ortega, 11 Wheaton, 467.

[NOTE.—A valuable note is attached to this case considering the general question of jurisdiction over foreign ministers.]

22. The certificate and seal of the minister resident from Great Britain in Hanover is not a proper authentication of the proceedings of a foreign court or of the proceedings of an officer authorized to take depositions. It is not connected in any way with the functions of the minister. His certificate and seal could only authenticate those acts which are appropriate to his office.

Stein vs. Bowman, 13 Peters, 209.

23. The laws of the United States which punish those who violate the privileges of a foreign minister are equally obligatory on the State courts as upon those of the United States, and it is equally the duty of each to quash the proceedings against any one having such privileges.

Ex parte Cabrera, 1 Washington, 232.

24. The injured party may seek his redress in either court against the aggressor, or he may prosecute under the twenty-sixth section of the law. (1 Stat. 117; R. S., § 4064.)

Ib.

25. The circuit court cannot quash proceedings against a public minister pending in a State court; nor can the court in any way interfere with the jurisdiction of the courts of a State.

Ib.

26. A secretary attached to the Spanish legation is entitled to the protection of the law of nations against any civil or criminal prosecution; but the circuit court cannot discharge him from criminal process, issued under the authority of the State of Pennsylvania.

Ib.

27. The certificate of the Secretary of State, dated subsequently to the assault and battery, is the best evidence to prove the diplomatic character of a person accredited as a minister by the Government of the United States.

The United States vs. William Liddle, 2 Washington, 205.

28. Parol evidence was admitted to prove the period when a person was considered by the Government of the United States as a minister.

Ib.

29. The law is the same in the case of a defendant charged with an assault of a minister as when charged with the same offense against a citizen; and if the minister gave the first assault the defendant will be excused for the subsequent battery though he was a minister.

Ib.

30. Where the chargé d'affaires had a large party at his house, and a transparent painting at his window at which a mob which had collected took offense, the defendant fired two pistols at the window, his intention being to destroy the painting without doing injury to the person of the minister or of any one.

The prisoner was indicted for an assault upon the chargé d'affaires of Russia, and for infracting the laws of nations, by offering violence to the person of the said minister.

United States vs. Hand, 2 Washington, 435.

31. Held, the law of nations identifies the property of a foreign minister, attached to his person or in his use, with his person. To insult them is an attack on the minister and his sovereign, and it appears to have been the intention of the act of Congress to punish offenses of this kind.

Id.

32. To constitute an offense against a foreign minister, the defendant must have known that the house on which the attack was made was the domicile of a minister, otherwise it is only an offense against the municipal laws of the state.

Id.

33. Upon an indictment for an assault committed on the chargé d'affaires of a foreign government, proof that the person assaulted is received and recognized by the Executive of the United States is conclusive as to his public character, and that he is entitled to all the immunities of a foreign minister.

United States vs. Ortega, 4 Washington, 531.

34. If a foreign minister commits the first assault, he forfeits his immunity so far as to excuse the defendant for returning it.

Id.

35. It is no defense upon such indictment that defendant was ignorant of the public character of the minister.

Id.

36. Domestic servants of a foreign minister are not liable to the ordinary tribunals of the country for misdemeanors.

United States vs. Lafontaine, 4 Cranch C. Ct., 173.

37. It is a breach of diplomatic privilege for an officer of justice to enter the dwelling-house of a secretary of legation, and there to seize a runaway slave; and for so doing the officer will be removed.

United States vs. Jeffers, 4 Cranch C. Ct., 704.

38. The mode of redress for a person privileged from arrest when arrested is by motion to the court from which the process issued.

Lyell vs. Goodwin, 4 McLean, 29.

39. Any person who executes process on a foreign minister is to be deemed an officer under section 26 of the act of 1790. (1 Stat., 117; R. S., § 4064.)

United States vs. Benner, Baldwin, 234.

40. To support an indictment under this law it is not necessary that the defendant should know the person arrested to be a foreign minister.

Ib.

41. A foreign minister cannot waive his privileges or immunities; his submission or consent to an arrest is no justification.

Ib.

42. An assault committed by him may be repelled in self-defense, but does not justify an arrest on process.

Ib.

43. An attaché to a foreign legation is a public minister within the act of Congress.

Ib.

44. A certificate by the Secretary of State, under seal of office, that a person has been recognized by the Department of State as a foreign minister, is full evidence that he has been authorized and received as such by the President of the United States.

Ib.

PUBLIC PROPERTY.

See Property of the United States.

REBELLION.

*See Civil War.
Sovereignty.*

RECAPTURED PROPERTY.

See Capture and Prize.

RECIPROCITY.

See Treaties.

RECLAMATION.

See Diplomatic Interference.

REGISTER—ROBBERY.**REGISTER.***See Ship's Papers.***REMOVAL FROM OFFICE.***See Office.***REPEALS.***See Statutes.***REPRISALS.**

1. The law of nations does not allow reprisals, except in case of violent injuries directed and supported by the state, and the denial of justice by all the tribunals, and afterward by the prince.

*Pagan's Case, 1 Op., 30, Randolph, (1793.)***RESIGNATION OF OFFICE.***See Office.***RESOLUTIONS OF CONGRESS.**

1. Joint resolutions of Congress are not distinguishable from bills, and, if approved by the President, or if duly passed without the approval of the President, they have all the effect of law.

Effect of Resolutions of one House, 6 Op., 680, Cushing, (1854.)

2. But separate resolutions of either house of Congress, except in matters appertaining to their own parliamentary rights, have no legal effect to constrain the action of the President or of the heads of Departments.

*Ib.***REVOLUTION.***See Sovereignty.
Civil War.***ROBBERY.***See Crimes.*

SAFE-CONDUCT.

1. There is no law authorizing the Secretary of State to furnish the owners of an American merchant-vessel with a letter of safe-conduct to the American ministers and naval officers in the East.

The Meteor, 12 Op., 65, *Stanbery*, (1866.)

SALARIES.

See Compensation.

1. Money due to an employé of the Government cannot be attached by the process of a State court in the hands of a disbursing officer.

Clinton's case, 10 Op., 120, *Bates*, (1861.)

SALVAGE.

1. A recapture from pirates gives a fair claim for salvage by the general maritime law; and by the act of March 3, 1800, (2 Stat., 16; repealed by act of 1864, ch. 174, § 35, 13 Stat., 315, R. S., 4652,) national ships are entitled to salvage from the ships of friendly powers rescued from their enemies; which act, in spirit, applies to rescues from pirates.

The Theodore, 1 Op., 577, *Wirt*, (1822.)

2. The officers and crew of a Government vessel are not entitled to salvage as against the Government for saving Government property.

Case of the Terrier, 1 Op., 675, *Wirt*, (1824.)

3. The officers and crew of a vessel in the marine service of the United States, are entitled to salvage for saving a French ship whilst on the rock of El Riso, near the anchorage of Anton Lizardo; the objection that government vessels are not thus entitled being invalid.

Claim of captain of the Iris, 5 Op., 116 *Johnson*, (1849.)

4. The rule is universal in the United States, that salvage rendered by the naval marine is to be compensated in like manner as that rendered by the private marine.

Ib.

5. Officers and crews of the public ships of the United States are not entitled to salvage, civil or military, as of complete legal right.

The Thomas Corwin, 7 Op., 756, *Cushing*, (1856.)

6. In the case of derelict property, saved under no unusual circumstances, a moiety is the maximum allowance made to the sailors.

The bark J. J. Cobb, 9 Op., 374, *Black*, (1859.)

7. The general English doctrine is that salvage is not due to a national vessel for services performed in recapturing from the enemy another vessel employed in the public service.

The Leviathan, 12 Op., 289, Stanbery, (1867.)

8. The statutes of the United States make no distinction between recapture by a public armed vessel of the United States and recapture by a private vessel. In case of the recapture of a public vessel by another public vessel, the salvage costs and expenses are payable from the Treasury.

Ib.

9. The officers and crew of a national vessel of the United States are entitled to salvage for salvage service.

United States vs. the Amistad, 15 Peters, 518.

10. The officers and crew of a foreign vessel of war are entitled to salvage on the same principles as it is allowed to other vessels.

Robson vs. the Huntress, 2 Wallace, jr., 59.

SCHELDT DUES.

See Treaties.

SEA-LETTERS.

See Ship's Papers.

SEAMEN.

See Consular Officers.

1. The issue of a warrant under the ninth article of the consular convention with France, of 1788, (Pub. Trs., 222, annulled by act of 1798, 1 Stat., 578,) is within the discretion of the district judge, and such discretion cannot be interfered with by the Supreme Court.

Case of Henry Barré, 1 Op., 55, Bradford, (1795.)

2. The master of a vessel belonging to the United States, sold in a foreign country in consequence of her being stranded, is not liable for three months' unearned pay to the seamen under the act of 1803, (2 Stat., 203; R. S., § 4580,) for neither justice, policy, no equity requires an appropriation of the proceeds of a sale for the return of a crew, when the sale was the result of a disastrous providence.

Case of discharged seamen, 1 Op., 148, Lincoln, (1804.)

3. Seamen left behind in a foreign country on account of inability, from sickness, to return in the vessel in which they went out, are within the provisions of the act of 1803, (2 Stat., 203; R. S., § 4580,) and for them the master should deposit with the consul three months' extra pay, as in other cases of voluntary discharge.

Rights of seamen, 1 Op., 593, Wirt, (1823.)

4. The three months' pay, over and above the wages due mariners, establishes a necessary connection between the pay so to be advanced to the consul by the ship-master, and the rate of wages then accruing to the seaman. See act 1803, (2 Stat., 203; R. S., §§ 4580, 4582.)

Obligations of ship-masters, 2 Op., 256, Berrien, (1829.)

5. The policy of the law and the plain intention of Congress were to discourage, as far as it was practicable, the discharge of American seamen in foreign countries.

Id.

6. Where a vessel had been wrecked on the coast of Spain, and the captain, exercising the authority which was vested in him under the circumstances, sold her on account of the underwriters, and discharged the ship's company, Held, that the case is not within the act of 1803, (2 Stat., 203; R. S., § 4582,) and that, therefore, the consul of the district of Alicante and Carthagena cannot retain three months' extra wages for the seamen.

The brig Pamela, 2 Op., 418, Berrien, (1831.)

7. The provisions of the act 1803, (2 Stat., 203; R. S., § 4582,) in relation to the extra wages of American seamen, to be paid to the consul where the ship is sold and her crew discharged in a foreign country, are confined to vessels owned by citizens of the United States and constituting a part of our mercantile marine by sailing under our flag.

Shipmasters and seamen, 2 Op., 448, Berrien, (1831.)

8. American seamen on foreign vessels must look to the laws of the country under whose flag they sail for remuneration and protection in such emergencies.

Id.

9. Seamen on board vessels of war are not entitled to pecuniary assistance from consuls abroad, under the act of 1803, (2 Stat., 203; R. S., § 4577.)

Aid to distressed seamen, 3 Op., 683, Legaré, (1841.)

10. The moneys in the hands of the Secretary of State were raised from the wages of merchant seamen only, and should be applied only for the relief of that class of seamen which have contributed to the fund.

Id.

11. Seamen on board of ships of war are not entitled to pecuniary assistance from consuls under the acts of 1792 (1 Stat., 256; repealed) and 1803, (2 Stat., 203; R. S., § 4577.)
Aid to distressed seamen, 3 Op., 685, *Legaré*, (1841.)
12. The act of 1803, section 4, (2 Stat., 204; R. S., § 4578,) requiring masters of vessels belonging to citizens of the United States, and bound to some port of the same, to take, at the request of the consul, destitute seamen on board, and to transport them to the port of the United States to which such vessels may be bound, is limited to such vessels as shall be bound from the port where the request is made direct to some port of the United States.
Case of the Philip Hone, 4 Op., 185, *Nelson*, (1843.)
13. American seamen shipped in a British vessel, and, in consequence of its being wrecked, left in a foreign port destitute, are entitled to the relief provided in section 4, act 1803, (2 Stat., 204; R. S., § 4577.)
Case of three seamen from the Duke, 5 Op., 547, *Crittenden*, (1852.)
14. Expenditures for the ransom of the crew and passengers of a wrecked American vessel, held prisoners by the Indians of Queen Charlotte's Island, do not come within the scope of the appropriations for the relief of American seamen, administered by the Secretary of State.
Question of ransom of American seamen, 6 Op., 126, *Cushing*, (1853.)
15. The statute provision for the surrender of deserting seamen applies only to seamen of those governments with which a treaty exists to that effect.
Case of deserter from Danish ship Saga, 6 Op., 148, *Cushing*, (1853.)
16. In the construction of treaties, the general doctrine is that any special advantage conceded by a party under one article of the compact is in consideration of all the advantages enjoyed by the same party under that and all the other articles.
Ib.
17. Engagements of extradition, whether of fugitives from justice or from service, stand in each case on particular stipulations of treaty, and are not to be inferred from the "favored-nation" clause in treaties.
Ib.
18. A legislative act of the British colony of New South Wales, enacting that certain proceedings may be had in the courts of that colony for the arrest and punishment of the deserting seamen of any foreign country in that colony, provided the government of such foreign country assents: Held, that the President cannot give such assent on the part of the United States, and that it can be done only by treaty or act of Congress.
Power of President as to legislation of foreign country, 6 Op., 209, *Cushing*, (1853.)

19. Consuls have no authority to order the sale of a ship in a foreign port. If, on such sale, the consul retains money for the payment of seamen's wages, he acts at his own peril, and is responsible to the owners.

The bark Serene, 6 Op., 617, *Cushing*, (1854.)

20. Masters of American vessels cannot lawfully discharge seamen in foreign ports without intervention of the consul. (See R. S., § 4576.)

The schooner Humboldt, 7 Op., 349, *Cushing*, (1855.)

21. It does not help the matter to allege that the seamen consent, or have misconducted themselves, or are not Americans. Of all that, it is for the consul to judge.

Ib.

22. Shipmasters in foreign ports are subject, on the requisition of the consul, to take on board and convey to the United States distressed seamen; but not seamen or other persons accused of crimes, to be transported to the United States for prosecution.

Case of Seneca S. Bishop, 7 Op., 722 *Cushing*, (1856.)

23. No indiotment lies against a master of a ship for discharging irregularly, in a foreign port, a seaman shipped irregularly in the United States.

The brig Ann Elizabeth, 7 Op., 730, *Cushing*, (1856.)

24. But a *qui-tam* action lies for the irregular shipment.

Ib.

25. Under the treaty with Spain, of 1819, (Pub. Trs., 716,) and the act of 1829, (4 Stat., 359; R. S., § 5280,) the apprehension and delivery of a seaman, who is alleged to be a deserter from a Spanish ship, is a judicial duty, and the State Department cannot change what a judge has done.

Manuel Castro's case, 9 Op., 96 *Black*, (1857.)

26. To prove the fact of desertion, the treaty requires the exhibition of the ship's roll, with the name of the deserter upon it, and this is not met by the mere certificate of a Spanish consul.

Ib.

27. The extradition laws do not require the proceedings against a deserting seaman to be either carried on or approved by the attorney of the United States for the proper district.

Duties of district attorneys, 9 Op., 246, *Black*, (1858.)

28. The master of a vessel is a mariner within the meaning of sections 3 and 4 of the act of 1803, (2 Stat., 203; R. S., §§ 4577, 4582,) and he is entitled, if a citizen of the United States, to three months' additional wages on being discharged in a foreign port, as in the case of a like discharge of any other seaman or mariner.

Arey's case, 11 Op., 458, *Speed*, (1866.)

29. The provisions of the treaty of 1 May, 1828, between the United States and Prussia, (Pub. Trs., 658,) for the arrest and imprisonment of deserters from public ships and merchant-vessels of the respective countries, applies to public vessels sailing under the flag of the North German Union and deserters from such vessels.

Deserters from the Niobe, 12 Op., 463, *Evarts*, (1868.)

30. Where the crew of an American ship had been shipped by the master in the United States, and the shipping articles contained a clause that "all moneys were to be paid in United States currency, or its equivalent in gold, at the current rate of exchange : " Held, that in settling some accounts with the master at Singapore, India, for wages of his crew, the United States consul there should have allowed a deduction from the pay of the seamen of the difference between United States currency and gold or silver the currency of Singapore, and the cost of exchange thereon between India and America.

Case of the ship Fearless, 13 Op., 557, *Akerman*, (1872.)

31. Though the law is liberal in construing contracts in favor of seamen, still it holds them capable of contracting, and bound like other persons by their contracts when no fraud is practiced upon them.

Ib.

32. The provisions of the act of 1872, (17 Stat., 273 ; R.S., § 4596 *et seq.*) relating to "discipline of seamen," were intended by Congress to apply only to seamen lawfully engaged for service on American vessels. [See *ex-parte D'Olivera*, 1 Gallison, 473, as to construction of act of 1790, (1 Stat. 131.)]

Case of district attorney for Oregon, 14 Op., 325, [326,] *Williams*, (1873.)

33. A consul has no authority to demand and receive from the master of a vessel the money and effects belonging to a deserter from the vessel.

Deserters from the bark Bolivia, 14 Op., 520, *Williams*, (1875.)

34. The steps which should be taken by the master with reference to the disposition of such property indicated.

Ib.

35. There is necessarily a several and distinct contract with each seaman, for the voyage, at his own rate of wages ; and though all may sign the same shipping-paper, no one is understood to contract jointly with, or to incur responsibility for, any of the others. The shipping articles constitute a several contract with each seaman to all intents and purposes, and are so contemplated by the act of Congress for the government and regulation of seamen in the merchant service ; and have been so practically interpreted by courts of justice, as well as by merchants and mariners, in all commercial nations in modern times. (1 Stat., 131 ; R. S., § 4596 *et seq.*)

Oliver vs. Alexander, 6 *Peters*, 145.

36. Seamen of the United States put on board a vessel of the United States by a consul in a foreign port are bound by the same regulations as articulated seamen. (See R. S., § 4577.)

United States vs. Sharp, Peters, C. C., 118.

37. Under the act of 1803, (2 Stat., 203; R. S., § 4578,) requiring the masters of American vessels bound homeward to provide passage for destitute seamen, on the request of consuls, the consul's certificate shall be presumptive evidence, not merely of the fact of the master's refusal to take the seaman on board, but of all the facts stated in the enacting clause, which are necessary to bring the case within the penalty.

Matthews vs. Offley, 3 Sumner, 115.

38. Foreigners, while employed as seamen in the merchant-ships of the United States, are deemed to be "mariners and seamen of the United States," within the language and policy of the act of 1803, (2 Stat., 203; R. S., § 4577,) which provides for destitute seamen in foreign ports.

Id.

39. If a seaman be entitled to the privileges of an American seaman, and be destitute, the consul is the proper judge as to the ship on board of which he should be placed for his return to the United States.

Id.

40. The bond given to the United States under the act of Congress of 1803, (2 Stat., 203; R. S., § 4576,) by the master of a vessel, conditioned for the return of the crew to the United States, is not forfeited where a vessel is sold in a foreign port and does not return to the United States; nor does it extend to the seaman who is lawfully separated from the ship, without the fault of the master or owner; but to those cases only where the vessel returns to the United States and where the ship's company continue subject to the authority of the master.

Montell vs. United States, Taney's Dec., 24.

41. By the general maritime law, desertion is an unauthorized absence from the ship, with an intention not to return.

Coffin vs. Jenkins, 3 Story, 108.

42. A was indicted for going on board a vessel, about to leave, without permission, in violation of section 62 of the shipping act of June 7, 1872: Held, that section 62 was valid, and it was competent to convict the prisoner, a runner for a boarding-house, and that the act is to be construed as protecting foreign vessels as well as vessels of the United States.

United States vs. Anderson, 10 Blatchford, 226.

43. The provisions of the act of 1872, (17 Stat., 265; R. S., § 4512,) known as the shipping act, provided that every agreement of the seaman shall be signed in the presence of a shipping commissioner; the act of January 15, 1873, (17 Stat., 410,) provided that section 12 of the above act should not apply to masters of vessels when engaged in trade with Mexico: Held, that the act of 1873 did not modify the provisions of the 13th section of the act of 1872, and that the master of a vessel making a voyage from New York to Mexico must make the agreement required, and the agreement must be signed, &c., before a shipping commissioner.

United States vs. Steamship City of Mexico, 11 Blatchford, 489.

44. A consul has no right to detain seamen in prison as a punishment, after he has discharged them from their contract at the request of the master.

Jordan vs. Williams, 1 Curtis, 69.

45. The action of a consul in discharging a seaman in a foreign port is not conclusive on the court where libel is filed for wages.

Campbell vs. The Unole Sam, 1 McAllister, 77.

46. An attempted rape by a seaman upon a female passenger in a foreign port is a sufficient ground of discharge.

Nieto vs. Clark, 1 Clifford, 145.

47. To work a forfeiture of wages, on the ground of desertion, the case must be brought strictly within the act of Congress.

Gifford vs. Killoch 3 Ware, 45.

48. So as to discharges for intemperance or smuggling.

Ib.

49. A deliberate refusal to do duty is a high offense. Except in very peculiar cases, the master must be obeyed.

The Palledo, 3 Ware, 321.

50. A consul's certificate is not evidence of acts not official or within his personal knowledge. The certificate of a consul in a foreign port as to transactions concerning a seaman's discharge, not within his official duties, is not evidence.

Brown vs. The Independence, Crabb's Rep., 54.

51. A minor who conceals himself on board a vessel, and is discovered when the vessel is at sea, although he has been put on duty as a seaman, could be put on shore and delivered to a consul without the payment of extra wages. In such case it would have been the duty of the consul to have afforded relief as a destitute seaman.

Luscom vs. Osgood, 1 Sprague, 82.

52. The right given to seamen by the act of 1840 (5 Stat., 396; R. S., § 4567) to lay their complaints before the American consul in foreign ports is one of great importance, which a court of admiralty will carefully protect.

Morris vs. Cornell, 1 *Sprague*, 62.

53. For what misconduct they may be discharged in a foreign port.

Jones vs. Sears, 2 *Sprague*, 43.

54. Where seamen are shipped on a vessel, unseaworthy at the time, they may abandon her or refuse to do duty on board. Such acts, under such circumstances, not amounting to mutinous conduct, do not work a forfeiture of wages.

The Moslem, *Olcott*, 289.

55. The act of 20th July, 1840, (5 Stat., 394; R. S., § 4575,) the fourth clause of which provides that "all interlineations or erasures in a hand different from that in which such duplicates were originally made shall be deemed fraudulent alterations, working no change in such papers, unless satisfactorily explained in a manner consistent with innocent purposes and the provisions of law which guard the rights of mariners," applies only to alterations which would vary their effect in respect to seamen. Erasures immaterial in this respect would be disregarded.

The Eagle, *Olcott*, 232.

56. Where a contract between the vessel and crew was fully explained and signed, the voyage as laid down in the articles cannot be varied.

The Quintero, 1 *Lowell*, 38.

57. Otherwise as to clauses oppressive in their nature and not clearly explained.

Id.

58. Notwithstanding the very sweeping language of section 3 of act 1803 (2 Stat., 203; R. S., § 4576) and section 8 of act 1840, (5 Stat., 395,) requiring masters of American vessels to give bond for the return of all the crew, unless discharged in a foreign country with consent of a consul, &c., yet these sections, construed with the aid of the other parts of these statutes, cannot be held to require a master to return to the United States foreign seamen shipped at their own home, for a particular cruise, ending where it began, and discharged there according to the terms of their contract, though without the consent of the consul.

United States vs. Parsons et al., 1 *Lowell*, 107.

59. The consent of a consul could not be rightly withheld in such a case, and there is no law requiring it to be asked.

Id.

60. Whether the bond is intended to be given for seamen, even if shipped in the United States, who by the terms of their engagement are entitled to be discharged abroad, *quære*.

Ib.

61. Extra wages allowed on the ground of a discharge in a foreign port and of an insufficient supply of provisions.

The Hermon, 1 *Lowell*, 515.

62. To constitute desertion and work a forfeiture of wages there must be an intent to desert. Going ashore without leave and with intent to return is not desertion.

The Catawanteak, 2 *Benedict*, 189.

63. A slight disobedience may not justify a discharge and loss of wages.

The Cornelia Amsden, 5 *Benedict*, 315.

64. A female shipped on board a vessel as cook is entitled to all the rights and subject to all the liabilities of a seaman or mariner. The requirements of the statute concerning shipping-articles extends as well to each cook as to the common sailor.

Sage-man vs. The Brandywine, 1 *Newberry, Adm.*, 5.
The Louisiana, 2 *Peters, Adm.*, 268.

65. A seaman, by the consent and assistance of the mate, but unknown to the master, left the vessel. Held, not liable to desertion or to a forfeiture of wages.

The Caroline E. Kelly, 2 *Abbott, U. S.*, 160.

66. Where seamen were shipped for a voyage from the United States and return, with a proviso that they might be discharged in a foreign port by mutual consent of themselves and the master, such agreement does not take the case out of the statute, requiring the payment of three months' extra wages; the consul must exact one month's wages for the Government, though he may permit the seaman to waive the two months to which he is entitled.

Pray's case, 10 *C. Cls.*, 454.

7. Where the nationality of the crew does not appear from the crew list, it will be presumed that they are citizens of the United States.

Ib.

SEARCH, RIGHT OF.

See *Visitation and Search*.

SECRETARIES OF LEGATION.

See *Compensation.*
Diplomatic Officers.
Public Ministers.

SECRETARY OF STATE.

1. The Secretary of State must decide, according to his own discretion, whether he will press the claim of a citizen of the United States upon the attention of a foreign government.

Perkins's claim, 9 Op., 338, Black, (1859.)

2. Where by a convention it was agreed that all moneys awarded by the commissioners under that convention on account of any claim, should be paid by one government to the other, the moneys found due from the foreign government to claimants who were citizens of the United States were properly paid to the Secretary of State, whose duty it was to have the same paid to those entitled to receive them.

Stubbs's case, 10 Op., 31, Bates, (1861.)

3. The Secretary of State has authority, under the joint resolution of 5th July, 1866, (14 Stat., 362,) to pay the moneys appropriated for the Paris Exposition, to be expended in Europe, in coin.

Paris Exposition, 12 Op., 9, Stanbery, (1866.)

4. There is no law authorizing the Secretary of State to furnish the owners of an American merchant vessel with a letter of safe-conduct to the American ministers and naval officers in the East.

The Meteor, 12 Op., 65, Stanbery, (1866.)

5. The direction of the entire work on the new State, War, and Navy building, and the disbursement of the appropriations provided therefor, are by law devolved on the Secretary of State.

Disbursements for new State Department, 14 Op., 409, Williams, (1874.)

SEIZURE.

See *Capture and Detention.*
Illicit Trade.
Neutral Territory.
Penalties and Forfeitures.

1. A vessel feloniously brought into one of our ports and there seized for violation of our revenue laws, should be restored to the innocent owners.

Case of the Maria, 1 Op., 509, Wirt, (1821.)

2. Nations may prevent seizures on the high seas, in the neighborhood of their coasts, in violation of their laws, and there is no fixed rule prescribing the distance from the coast within which such seizures may be made.

Church vs. Hubbard, 2 Cranch, 187.

3. The seizure *de facto*, out of his dominions, will not give jurisdiction to a sovereign over a thing never brought within them.

Rose vs. Himely, 4 Cranch, 241.

4. He cannot authorize a seizure on the high seas for a breach of a municipal regulation.

Ib.

5. A seizure for the breach of the municipal laws of one nation cannot be made within the territory of another.

The Apollon, 9 Wheaton, 362.

SERVANTS.

1. The arrest of the domestic servant of a public minister is declared illegal by the act concerning crimes, (1 Stat., 117; R. S., § 4063.) All process for the purpose is annulled, and the persons concerned in the process are liable to fine and imprisonment.

Case of Van Berckel's servant, 1 Op., 26, Randolph, (1792.)

2. If, however, the domestic be a citizen or inhabitant of the United States, and shall have contracted, prior to his entering into the service of the minister, debts still unpaid, he shall not take the benefit of the act.

Ib.

3. Nor shall any person be proceeded against under the act for such arrest, unless the name of the domestic be registered in the Secretary of State's Office and transmitted to the marshal of the district in which Congress shall reside.

Ib.

4. Domestic servants of a foreign minister are not liable to the ordinary tribunals of the country for misdemeanors.

United States vs. Lafontaine, 4 Cranch Cir. Ct., 173.

SHIPMASTERS.

See Seamen.

SHIPS.

See Extritoriality.

Foreign Ships of War.

Neutral Territory

SHIP'S PAPERS.

See *Consular Officers*.

1. Section 2 of act of 1803 (2 Stat., 203; R. S., § 4309,) does not require the papers of an American vessel in a foreign port to be delivered to the consul, except in cases where it is necessary to make an entry at the custom-house.

Case of the consul at Nassau, 4 Op., 390, Mason, (1845.)

2. In order that the master of a ship, on her "arrival" in a foreign port, shall be compellable to deposit the ship's papers with the consul, the arrival must be such an one as involves entry and clearance.

Case of the commercial agent at St. Thomas, 6 Op., 163, Cushing, (1853.)

3. Masters of American vessels are subject to prosecution in the name of the consul for omission to deposit with him the papers according to law, but not to indictment. (2 Stat., 203, § 2; R. S., § 4310.)

The Gauntlet and the Alleganian, 7 Op., 395, Cushing, (1855.)

4. The commander of an American vessel is required to deliver his register and other ship's papers to the consul at a foreign port only in cases where he is compelled to make an entry at the custom-house.

The New York and Havre steamers, 9 Op., 256, Black, (1858.)

5. The master of an American vessel sailing to or between ports in the British North American provinces is required, on arriving at any such port, to deposit his ship's papers with the American consul.

American steamers at Port Sarnia, 11 Op., 72, Bates, (1866.)

6. The act of 1861 (12 Stat., 315; R. S., § 1720,) does not change or affect the duties of masters of American vessels running regularly by weekly or monthly trips, or otherwise, to or between foreign ports, as imposed by act of 1803, (2 Stat., 203; R. S., § 4309.)

Ib.

7. If an American vessel is obliged by the law or usage prevailing at a foreign port to effect an entry, and she does enter conformably to the local law or usage, her coming to such foreign port amounts to an arrival within the meaning of section 2 of the act of 1803, (2 Stat., 203; R. S., § 4309,) independently of any ulterior destination of the vessel, or the time she may remain or intend to remain at such port, or the particular business she may transact there.

Ib.

8. The provisions of the act of 1803 (2 Stat., 203; R. S., § 4309) in reference to the deposit of ships' papers with American consuls apply to American steam ferry-boats running between Detroit and Windsor, Canada West. (But see subsequent act, 1872, 17 Stat., 214; R. S., § 2792.)

Case of the consul at Windsor, 11 Op., 237, Speed, (1865.)

SICK SEAMEN.

See *Seamen*.

SLAVES.

1. The bringing away of slaves from Martinique, the property of residents there, may be piracy, or, depending upon the precise place of its commission, may only be an offense against the municipal laws.

Slaves from Martinique, 1 *Op.*, 29, *Randolph*, (1792.)

2. The Government may instruct the attorney of the United States to prosecute the offenders *criminaliter* as far as the law will permit, having in view the restitution of the negroes to their true owners, and if that fail to restore them, to issue civil process with the approbation of the owner or agent.

Ib.

3. Where a French vessel, with Africans on board unlawfully taken from their native land, was captured by pirates, and from them recaptured by an American vessel and brought into port, and a demand for the Africans was made by the French minister with a view to their restoration to their native land, Held, that the application was well founded and should be acceded to.

Case of the La Pensée, 1 *Op.*, 534, *Wirt*, (1822.)

4. It is the duty of the President to cause to be delivered to the minister of Denmark a slave who, by concealment in an American vessel lying at St. Croix, had been brought to a port of the United States, and detained in prison until orders might be given concerning his further disposal.

James Barry's case, 1 *Op.*, 566, *Wirt*, (1822.)

5. So long as Denmark tolerates slavery in her dominions, it is an invasion of her sovereignty to take away from St. Croix by seduction, invitation, connivance, ignorance, or mistake, slaves from the possession of Danish owners, and if avowed and unredressed on our part, is a just cause of war; to bring them to the United States and to refuse to return them to their owners on the call of their government, would be such a violation of private property and such a lawless infraction of the rights and sovereignty of Denmark, as to expose us to the just resentment of that nation, and the merited reproach of the civilized world.

Ib.

6. The President may issue an order, directed to the marshal of the district, requiring him to deliver the slave to the order of the minister of Denmark; or he may notify the governor of the State of the facts, and request him to cause the slave to be delivered to the marshal for the purpose of delivering him over to the minister.

Id.

7. Certain slaves were shipped by their Spanish owners from Havana to Pensacola in an American vessel, in violation of the laws of the United States. The vessel was captured by the American military force then occupying Fort Barrancas. Afterward, while proceeding to adjudication, the slaves and vessel were seized by a revenue vessel and carried into the port of Mobile. The vessel and cargo were condemned, but restitution of the slaves was awarded, because the original capture was not made by a "commissioned vessel of the United States." The original capture being lawful, and the slaves (though restored) being on board unlawfully, the Spanish owners have no claim as for an "injury" under the treaty with Spain of 1819. (Pub. Trs., 715.)

Case of Spanish slaves, 2 Op., 198, Berrien, (1829.)

8. An engagement in a treaty for mutual freedom and liberty of commerce cannot be construed to imply an obligation to protect the rights of foreign owners of slaves brought to our shores as seamen.

Slaves on British vessels, 2 Op., 475, Taney, (1831.)

9. A ship entering the port of a friendly power with slaves on board, would not, according to the law of nations in analogous cases, be responsible on that account to the local authorities so long as those slaves continued on board. But it may be conceded, in view of the English doctrine, that in this particular case ships voluntarily entering British ports, with a knowledge of the state of British law, may be taken to have voluntarily submitted to that law, right or wrong, as it is interpreted there.

Case of the Creole, 4 Op., 98, Legaré, (1842.)

10. The courts of the United States are open to the complaint of the owner of an abducted slave; but the executive authority cannot properly interfere to administer relief in such cases.

Where an American vessel has brought off a slave from the Cape de Verde Islands, the Executive will not interfere further than to direct the district attorney to inquire into the facts, and to institute a prosecution if they warrant it.

Case of Antonio Soares Timas, 4 Op., 269, Nelson, (1843.)

SLAVE-TRADE.

1. The act of the United States schooner *Grampus*, in bringing in for adjudication, under act of March 3, 1819, (3 Stat., 510; R. S., § 4293,) "to protect the commerce of the United States and punish the crime of piracy," the *Phoenix*, with Africans found on board of her, was not a violation of the laws concerning the slave-trade.

The Phoenix, 2 Op., 365, Berrien, (1830.)

2. The selling of an American vessel in the port of Rio Janeiro to a slave-dealer, deliverable on the coast of Africa, is not of itself an aiding or abetting of the slave-trade. But if he lend assistance to such slave-dealer by navigating the vessel to the coast of Africa upon an outward slave-trade voyage, he becomes thereby a participant in the trade, and subject to punishment; but if he only make a *bona fide* sale of his property, deliverable upon that coast or elsewhere, he does not incur any responsibility.

The Lucy Penniman, 4 Op., 241, Nelson, (1843.)

3. That a citizen of the United States who charters an American vessel to a slave-dealer to deliver at his factory or to his agents on the coast of Africa articles which may be exchanged for slaves, or food which may be used to supply them, is thereby necessarily implicated as aiding and abetting the slave-trade, cannot be affirmed as universally true. A trade in articles of necessity to the coast of Africa is not interdicted by our laws, nor is the sale of such articles upon the coast of Africa to one engaged in the prosecution of the slave-trade thereby prohibited. Nor does the chartering of a vessel for such an object *per se* involve any violation of the provisions of our statute.

Ib.

4. If an American citizen charter his vessel for the prosecution of a slaving voyage he will be guilty of a violation of the slave-trade acts; but if he charter his vessel for the prosecution of a voyage which is *prima facie* innocent, the fact that it may be converted to an inhibited ulterior purpose will not expose him to the penalty or his vessel to forfeiture.

Ib.

5. Americans who have participated in the slave-trade in foreign ports are indictable in any district of the United States in which they may be found.

Case of Captains Clapp and Smith, 5 Op., 454, Crittenden, (1851.)

6. As to what will constitute a violation of the laws against slave-trading, and the proof required in particular cases, see—

The Emily, 9 *Wheaton*, 381.

The Merino, 9 *Wheaton*, 391.

The Plattsburgh, 10 *Wheaton*, 133.

United States vs. Gooding, 12 *Wheaton*, 460.

United States vs. La Garonne, 11 *Peters*, 73.

United States vs. Morris, 14 *Peters*, 464.

Strohm vs. United States, *Taney's Dec.*, 413.

United States vs. Westervelt, 5 *Blatchford*, 30.

7. The African slave trade is not contrary to the law of nations.

The Antelope, 10 *Wheaton*, 66.

8. One nation cannot execute the penal laws of another, and consequently a foreign vessel engaged in the slave-trade cannot lawfully be captured by an American cruiser.

Ib.

9. Persons trading to the west coast of Africa, on which coast two kinds of commerce are carried on—one (the regular trade) lawful, the other (the slave-trade) criminal—should keep their operations so clear and distinct in their character as to repel the imputation of a purpose to engage in the latter.

The Slavers, 2 *Wallace*, 350.

SOVEREIGNTY.

See *Penalties and forfeitures*.

1. It is an offense against the law of nations for any persons, whether citizens or foreigners, to go into the territory of Spain with intent to recover their property by their own strength, or in any manner other than its laws permit.

Territorial rights—Florida—1 *Op.*, 68, *Lee*, (1797.)

2. So long as Denmark tolerates slavery in her dominions it is an invasion of her sovereignty to take away from St. Croix by seduction, invitation, connivance, ignorance, or mistake, slaves from the possession of Danish owners, and if avowed and unredressed on our part is a just cause of war.

James Barry's case, 1 *Op.*, 566, *Wirt*, (1822.)

3. The seizure of an American vessel by an American ship of war, within the jurisdiction of a foreign government, for an infringement of our revenue or navigation laws, is a violation of the territorial authority of the foreign government.

The schooner Ariel, 4 *Op.*, 285, *Nelson*, (1843.)

4. The law of nations as to territorial sovereignty discussed.

Bark Eliza and pilot, 7 *Op.*, 229, *Cushing*, (1855.)

5. It is a settled principle of the law of nations that no belligerent can rightfully make use of the territory of a neutral state for belligerent purposes, without the consent of the neutral government.

British consul's case, 7 Op., 367, Cushing, (1855.)

6. The undertaking of a belligerent to enlist troops of land or sea in a neutral state, without the previous consent of the latter, is a hostile attack on its neutral sovereignty.

Ib.

7. The conquest of a country or portion of a country by a public enemy entitles such enemy to the sovereignty, and gives him civil dominion as long as he retains his military possession. Inhabitants and strangers who go there during the occupation of the enemy must take the law from him as the ruler *de facto*, and not from the government *de jure* which has been expelled.

The Georgiana and Lizzie Thompson, 9 Op., 140, Black, (1858.)

8. A revolutionary party, like a foreign belligerent power, is supreme over the country it conquers, as far and as long as its arms can carry and maintain it.

Ib.

9. The United States Government cannot purchase a grant of land in, or concession of a right of way over, the territories of another nation as could an individual or private corporation, since, by the law of nations, one government cannot enter upon the territories of another or claim any right whatever therein.

The Chiriqui Improvement Company, 9 Op., 286, Black, (1859.)

10. No foreign power can rightfully erect any court of judicature within the United States, unless by force of a treaty. The admiralty jurisdiction exercised by consuls of France in the United States is not of right.

Glass vs. The sloop Betsey, 3 Dallas, 6.

11. A power to seize for a violation of the laws of the country is an attribute of sovereignty, and is to be exercised within the limits which circumscribe the sovereign power, from which it is derived.

The rights of war may be exercised on the high seas, but a seizure beyond the limits of territorial jurisdiction for a breach of a municipal regulation is not warranted by international law.

Rose vs. Himely, 4 Cranch, 241, [279.]

12. The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction.

Schooner Exchange vs. McFaddon, 7 Cranch, 116, [136.]

13. All exceptions, therefore, to the full and complete power of a nation within its own territories must be traced up to the nation itself. This consent may be either express or implied.

Ib.

14. By the conquest and military occupation of a portion of the territory of the United States by a public enemy, that portion is to be deemed a foreign country so far as respects our revenue laws.

United States vs. Rice, 4 Wheaton, 246.

15. The municipal laws of one nation do not extend in their operation beyond its own territory, except as regards its own citizens. A seizure for the breach of the municipal laws of one nation cannot be made within the territory of another.

The Apollon, 9 Wheaton, 362.

16. Every nation acquiring territory, by treaty or otherwise, must hold it subject to the constitution and laws of its own government, and not according to those of the government ceding it.

Pollard's lessee vs. Hagan, 3 Howard, 225.

17. By the conquest and occupation of Castine, that territory passed under the temporary allegiance and sovereignty of the enemy. The sovereignty of the United States over the territory was suspended during such occupation, so that the laws of the United States could not be rightfully enforced there, or be obligatory upon the inhabitants who remained and submitted to the conquerors.

United States vs. Hayward, 2 Gallison, 501.

18. But a territory conquered by an enemy is not to be considered as incorporated into the dominions of that enemy, without a renunciation in a treaty of peace, or a long and permanent possession. Until such incorporation, it is still entitled to the full benefit of the law of postliminy.

Ib.

19. Where an officer of the Navy, without instructions from his Government, seized property in the Falkland Islands, claimed by citizens of the United States, which, it was alleged, had been piratically taken by a person pretending to be governor of the islands, held, that such officer had no right, without express direction from his Government, to enter the territoriality of a country at peace with the United States and seize property found there claimed by citizens of the United States. Application for redress should have been made to the judicial tribunals of the country.

Davison vs. Seal-skins, 2 Paine, 324.

SPANISH CLAIMS.

See American and Spanish Commission.

SPANISH VICEROYS.

1. It was the practice of the Spanish Crown, during the reigns of Charles I and his successors of the Austrian dynasty, to delegate to Spanish viceroys, governors, and captains-general the *jus legationis*, as well in Europe as in Asia and America; and that delegation was recognized by the public law of Europe.

Powers of Spanish viceroys, 7 Op., 551, Cushing, (1855.)

STATE.

1. Some not unimportant aid * * * in ascertaining the true sense of the Constitution may be derived from considering what is the correct idea of a State, apart from any union or confederation with other States. The poverty of language often compels the employment of terms in quite different significations; and of this hardly any example more signal is to be found than in the use of the word we are now considering. It would serve no useful purpose to attempt an enumeration of all the various senses in which it is used. A few only need be noticed.

It describes sometimes a people or community of individuals united more or less closely in political relations, inhabiting temporarily or permanently the same country; often it denotes only the country or territorial region inhabited by such a community; not unfrequently it is applied to the government under which the people live; at other times it represents the combined idea of people, territory, and government.

This is undoubtedly the fundamental idea upon which the republican institutions of our own country are established.

Texas vs. White, 7 Wallace, 700, [720.]

2. In the Constitution the term State most frequently expresses the combined idea just noticed, of people, territory, and government. A State, in the ordinary sense of the Constitution, is a political community of free citizens, occupying a territory of defined boundaries, and organized under a government sanctioned and limited by a written constitution, and established by the consent of the governed. It is the union of such States, under a common constitution, which forms the distinct and greater political unit which that Constitution designates as the United States, and makes of the people and States which compose it one people and one country. * * *

Ib.

3. But it is also used in its geographical sense, as in the clauses which require that a Representative in Congress shall be an inhabitant of the State in which he shall be chosen, and that the trial of crimes shall be held within the State where committed.

Ib.

4. And there are instances in which the principal sense of the word seems to be that primary one to which we have adverted, of a people or political community as distinguished from a government.

Ib.

5. In this latter sense the word seems to be used in the clause which provides that the United States shall guarantee to every State in the Union a republican form of government, and shall protect each of them against invasion.

In this clause a plain distinction is made between a State and the government of a State.

Ib.

STATE AUTHORITY.

See *Extradition*.

STATE DEPARTMENT.

1. By article 11 of the treaty of 1819, between the United States and Spain, (Pub. Trs., 716,) the Department of State was made the depository of the records and papers referred to in the article. They should not be delivered to the claimants, and any law of Congress which should authorize or direct them to be delivered up would be a violation of the treaty.

Depository of records, 2 Op., 515, Taney, (1832.)

2. Miscellaneous expenditures incurred by order of the State Department for the purpose of preserving the neutrality of the United States are chargeable to the funds of that Department.

Case of the United States and Ocean Wave, 7 Op., 398, Cushing, (1855.)

3. Where, by the convention of 1853 with Great Britain (Pub. Trs., 328) it was agreed that all moneys awarded by the commissioners under the convention, on account of any claim, should be paid by one government to the other, the moneys found due from the foreign government to claimants, who were citizens of the United States, were properly paid to the Secretary of State, whose duty it was to have the same paid to those entitled to receive them.

Stubbs's case, 10 Op., 31, Bates, (1861.)

4. It is the appropriate duty of the disbursing-clerk of the State Department to take charge of and disburse such moneys.

Ib.

5. He is not entitled, therefore, to commissions on the fund for any services rendered in keeping and disbursing the same.

Ib.

STATE, WAR, AND NAVY BUILDING.

1. The direction of the entire work on the new State, War, and Navy building, and the disbursement of the appropriations provided therefor, are by law devolved upon the Secretary of State.

Disbursements, 14 Op., 409, Williams, (1874.)

STATUTES.

1. An act of Congress which contains no provision as to the time when it shall go into effect, takes effect when it receives the approval of the President.

Hunt's case, 3 Op., 82, Butler, (1836.)

2. In general the law does not notice fractions of a day. Where, however, questions of rights, growing out of instruments bearing the same date, arise, the precise time of the approval of an act may be inquired into.

Ib.

3. In construing an act of Congress the declarations of members of Congress, in debate on the passage of the law, cannot be considered to control the legal intentment of the law.

Derrick & Mackie's case, 6 Op., 464, Cushing, (1834.)

4. A statutory provision which authorizes the President to reconsider a thing lawfully done under a previous act of Congress, is not mandatory in its effect.

Appointment of a commissioner, 8 Op., 41, Cushing, (1856.)

5. A statute which merely authorizes the payment of a sum of money by one of the Heads of Department, is not mandatory in fact or in amount.

Appropriation act, P. O. Department, 8 Op., 39, Cushing, (1856.)

6. Distinction of effect between authority and command in statutes. The words "may" and "shall" in statutes, have no fixed meaning of either authority or command.

George H. Giddings's case, 8 Op., 111, Cushing, (1856.)

7. When private bills are inserted as amendment in the general acts of appropriations, such bills are to be construed most in the sense of the rights of the Executive, and of the branch of Congress which acquiesces in such irregular legislation.

Ib.

8. As to every act professing to repeal or interfere with the provisions of a former law, it is a question of construction whether it operates as a total or partial repeal.

California claims, 12 Op., 250, Starbery, (1867.)

9. The laws of the United States ought not, if it be avoidable, so to be construed as to infract the common principles and usages of nations or the general doctrines of national law.

Talbot vs. Seeman, 1 *Cranch*, 43.

10. An act of Congress ought never to be construed to violate the law of nations if any other possible construction remains, and, consequently, can never be construed to violate neutral rights or to affect neutral commerce further than is warranted by the law of nations, as understood in this country.

Murray vs. Schooner Charming Betsy, 2 *Cranch*, 118.

11. No general words in a statute can divest the Government of its rights or remedies.

United States vs. Herron, 20 *Wallace*, 251.

12. A new statute which "amends" an old one, and purports to revise the entire matter to which they both had reference, impliedly repeals the former act.

Murdock vs. City of Memphis, 20 *Wallace*, 590.

STEAMER VIRGINIUS.

See *Aliens*.

Virginus.

SUITS.

See *Executive interference*.

Property of the United States.

Public minister.

1. The courts of the United States are at all times open to the subjects of a foreign power in friendly relations with us. The more especially will such remedies be extended in case of fraud.

Antoine's case, 1 *Op.*, 192, *Rush*, (1816.)

2. In general, it is not the duty of the United States to assume the legal defense by counsel of ministerial officers of the law, where they are sued for official acts.

But the President, in the discharge of his constitutional duty to take care that the laws be faithfully executed, may, in his discretion, well assume in certain cases the defense of such ministerial officers.

Case of the marshal of Indiana, 6 *Op.*, 220, *Cushing*, (1853.

3. The right to do this cannot be limited to cases in which the property of the United States is concerned, but extends to other cases.

more especially those affecting the constitutional security of the Government, whether in the relations of the United States to foreign governments, or that of the States among themselves, or that of the States to the United States.

Id.

4. Where a court of one of the States assumes to take, by *habeas corpus*, out of the hands of a marshal of the United States, a person held by him as a fugitive from foreign justice, and under reclamation by treaty, the United States should authorize the marshal to call in aid the services of the district attorney.

Heilbronn's case, 6 *Op.*, 227, *Cushing*, (1853.)

5. In cases of vexatious suits against marshals of the United States for lawful acts done by them in the extradition of fugitives from justice or service, the President may authorize the employment of counsel in their behalf by the United States.

Case of marshal in Pennsylvania, 6 *Op.*, 500, *Cushing*, (1854.)

6. Judicial proceedings, by certain private parties, having been had in the consular court at Alexandria, Egypt, before H., the consul-general, against one D., the latter afterward brought suit against the late consul-general in the supreme court of the District of Columbia, alleging that he had acted in bad faith, maliciously, and without authority of law. The consul-general thereupon asked that the Government assume the defense of this suit. Advised that, as the proceedings against D. were not promoted by or in the interest of the United States, the latter are under no obligation to assume the defense of the suit.

Charles Hale's case, 14 *Op.*, 189, *Williams*, (1873.)

SURETIES.

See Bonds.

1. The sureties of a public officer are not liable to the United States for moneys improvidently advanced to such party by the Government after he shall have ceased to hold office.

Case of a sub-Indian agent, 8 *Op.*, 7, *Cushing*, (1856.)

2. Laws requiring of Government officers the settlement of accounts at stated periods, or which contain directions binding on the officers, constitute no part of the contract with the surety.

United States vs. Kirkpatrick, 9 *Wheaton*, 720.

United States vs. Nicholl, 12 *Wheaton*, 505.

United States vs. Cutter, 2 *Curtis*, 617.

3. Mere delay or voluntary forbearance on the part of a creditor toward the principal debtor, not amounting to an agreement, and creat-

ing no limitation upon the right to proceed, and which can be terminated at any moment, is no defense to a surety.

United States vs. Kirkpatrick, 9 *Wheaton*, 720.

Sprigg vs. Bank of Mount Pleasant, 14 *Peters*, 201.

Creath vs. Sims, 5 *Howard*, 192.

4. If a bond drawn to be executed by two sureties be signed by only one, and by him be delivered as an escrow to operate as his deed when the other shall have signed and delivered it, he is not bound until such signature and delivery by the other surety; otherwise if the first who signs delivers it as his deed.

Duncan vs. United States, 7 *Peters*, 435.

5. A person who signs as surety a printed form of Government bond, already signed by another as principal, but the spaces in which for names, dates, amounts, &c., remain blank, and who then gives it to the person who has signed as principal, in order that he may fill the blanks with a sum agreed on between the two parties, and with the names of two sureties who shall each be worth another sum agreed on, and then have those two persons sign it, makes such person signing as principal his agent to fill up the blanks and procure the sureties. If such person fraudulently fill up the blanks with a larger sum than that agreed on between the two persons, and have the names of worthless sureties inserted, and such sureties to sign the bond, and the bond thus signed and filled up be delivered by the principal to the Government, which accepts it in the belief that it has been properly executed, the party so wronged cannot, on suit on the bond, again set up the private understanding which he had with the principal.

Butler vs. United States, 21 *Wallace*, 272.

6. The mere taking of a second bond does not discharge the first.

Postmaster-General vs. Munger, 2 *Paine*, 189.

Postmaster-General vs. Reeder, 4 *Washington*, 678.

7. Where a new bond is given by a public officer, his sureties thereon are not liable for prior defalcations unless such liability is specially provided for.

Myers vs. United States, 1 *McLean*, 493.

8. A surety who executes the bond of a consul is not responsible for moneys remitted to him for purposes not within his consular duties as defined by law.

United States vs. Bell, *Gilpin*, 41.

TENURE OF OFFICE.

See *Office*.

TERRITORIAL RIGHTS.

• See *Sovereignty*.

TERRITORIAL SOVEREIGNTY.

See *Sovereignty*.

TONNAGE DUES.

See *Treaties*.

TONNAGE TAX.

1. A statute of a State enacting that the masters and wardens of a port within it should be entitled to demand and receive, in addition to other fees, the sum of five dollars, whether called on to perform any service or not, for every vessel arriving in that port, is a tonnage tax, and is unconstitutional and void.

Steamship Company vs. Port Wardens, 6 Wallace, 31.

2. It was not only a *pro-rata* tax which was prohibited by the Constitution, but any duty on the ship, whether a fixed sum upon its whole tonnage, or a sum to be ascertained by comparing the amount of tonnage with the rate of duty.

Ib., 35.

3. Taxes levied by a State upon vessels owned by its citizens as property, and based on a valuation of the same, are not prohibited by the Federal Constitution, yet taxes cannot be imposed on them by the State "at so much per ton of the registered tonnage." Such taxes are within the prohibition of the Constitution that "no State shall, without the consent of Congress, lay any duty of tonnage."

State tonnage tax cases, 12 Wallace, 204.

4. Nor is the case varied by the fact that the vessels were not only owned by citizens of the State, but exclusively engaged in trade between places within the State.

Ib.

5. A State cannot, in order to defray the expenses of her quarantine regulations, impose a tonnage tax on vessels owned in foreign ports, and entering her harbors in pursuit of commerce.

Peete vs. Morgan, 19 Wallace, 581.

6. Any duty, or tax, or burden imposed under the authority of the States, which is in its essence a contribution claimed for the privilege of arriving and departing from a port of the United States, and which is assessed on a vessel according to its carrying capacity, is a tonnage tax within the meaning of the Federal Constitution, and therefore void.

Cannon vs. New Orleans, 20 Wallace, 577.

TRADING WITH ENEMY.

See *Illicit Intercourse*.

TRANSPORTATION.

See *Treaties—Great Britain*.

TRAVELING EXPENSES.

1. Traveling expenses incurred in the discharge of a public service may be allowed to an officer, although his salary is fixed by law.

Thompson's claim, 4 Op., 372, Mason, 1845.

2. The American commissioner appointed under the treaty with Great Britain of 1853 (Pub. Trs., 329) is entitled to the cost of transportation to and from London.

Case of British and American commissioners, 6 Op., 65, Cushing, 1853.

TREASON.

See *Crimes*.

TREATIES.

GENERAL Y.

1. Commissioners to execute a treaty must all agree to the same, and subscribe their names and attach their seals thereto.

Execution of treaties, 1 Op., 66, Lee, (1796.)

2. An engagement in a treaty for mutual freedom and liberty of commerce cannot be construed to imply an obligation to protect the rights of foreign owners of slaves brought to our shores as seamen.

Slaves on British vessels trading to United States, 2 Op., 475, Taney, (1831.)

3. The judiciary cannot arrest the execution of a treaty by stopping the money to be paid under it while in the hands of the agent of the executive.

The Winnebago Indians, 3 Op., 471, Grundy, (1839.)

4. If an injunction should issue stopping the payment of money due under a treaty in the hands of an agent of the Executive, the injunction should be disregarded.

Ib.

5. An act of Congress must have effect, though inconsistent with a prior treaty.

Florida Claims, 5 Op., 333, Crittenden, (1851.)

6. An act of Congress is as much the supreme law of the land as a treaty. They are placed on the same footing, and no preference or superiority is given to the one over the other. The last expression of the law giving power must prevail.

Ib., (345.)

7. In the construction of treaties the general doctrine is that any special advantage conceded by a party under one article of the compact is in consideration of all the advantages enjoyed by the same party under that and all the other articles.

Case of a deserter from the Danish ship Saga, 6 Op., 148, Cushing, (1853.)

8. Engagements of extradition, whether of fugitives from justice or from service, stand in each case on particular stipulations of treaty, and are not to be inferred from the "favored-nation" clause in treaties.

Ib.

9. A treaty constitutionally concluded and ratified abrogates whatever law of any one of the States may be inconsistent therewith.

Effect of copyright convention, 6 Op., 291, Cushing, (1854.)

10. Semble, a treaty made conformably to the Constitution in substance and form has the effect of repealing all pre-existing Federal law in conflict with it, whether unwritten, as the law of nations or admiralty, or written, as legislative statutes.

Ib.

11. At any rate, if the effect of a treaty on existing statutes admit of doubt, Congress never has failed to pass acts requisite to give effect to any treaty not containing provisions incompatible with the Constitution.

Ib.

12. The relative authority of treaties and statutes considered.

Pre-emptions in Kansas, 6 Op., 658, Cushing, (1854.)

[Mr. Cushing, although his opinion does not so expressly state, seems to differ from Mr. Crittenden (see Nos. 5 and 6, *supra*) as to the relative authority of treaties and statutes. See, however, No. 16 and cases cited, *infra*.]

13. The Government of the United States has constitutional power to enter into treaty stipulations with foreign states, for the purpose of restricting or abolishing the property disabilities of aliens or their heirs in the several States.

Droit d'Aubaine, 8 *Op.*, 411, *Cushing*, (1857.)

14. Where, by a convention, it was agreed that all moneys awarded by the commissioners under that convention on account of any claim should be paid by one government to the other, the moneys found due from the foreign government to claimants who were citizens of the United States were properly paid to the Secretary of State, whose duty it was to have the same paid to those entitled to receive them.

British treaty of 1853, 10 *Op.*, 31, *Bates*, (1861.)

15. The words "confirmed by law" mean confirmation by the act of that power which under our system enacts law.

A confirmation by treaty is a confirmation by law, inasmuch as a treaty is to be regarded as an act of the legislature, whenever it operates without the aid of a legislative provision.

Laventure's case, 10 *Op.*, 507, *Coffey, ad int.*, (1863.)

16. Under the Constitution, treaties, as well as statutes, are the law of the land, both the one and the other, when not inconsistent with the Constitution, standing upon the same level and being of equal force and validity; and, as in the case of all laws emanating from an equal authority, the earlier in date yields to the later.

Choctaw Indians, 13 *Op.*, 354, *Akerman*, (1870.)

17. A treaty cannot be the supreme law of the land, that is, of all the United States, if any act of a State legislature can stand in its way.

If the constitution of a State (which is the fundamental law of a State and paramount to its legislature) must give way to a treaty, and fall before it, can it be questioned whether the less power, an act of the State legislature, must not be prostrate?

If a law of a State contrary to a treaty is not void, but voidable only by a repeal or nullification by a State legislature, this certain consequence follows, that a will of a small part of the United States may control and defeat the will of the whole.

Ware vs. Hylton, 3 *Dallas*, 199, (237.)

18. It is apparent that the constitution or laws of any of the States, so far as either of them shall be found contrary to the treaty of 1783, are by the force thereof prostrated before it.

Ib.

19. The execution of a contract between nations is to be demanded from, and, in general, superintended by the executive of each nation; and, therefore, whatever the decision of the court may be relative to the rights of parties litigating before it, the claim upon the nation, if unsatisfied, may still be asserted. But yet where a treaty is the law of the land, and as such affects the rights of parties litigating in court, that treaty as much binds those rights, and is as much to be regarded by the court as an act of Congress; and although restoration may be an executive act, yet to condemn a vessel the restoration of which is directed by a law of the land, would be a direct infraction of that law, and, consequently, improper.

United States vs. The Peggy, 1 *Cranch*, 109.

20. The rules that neutral bottoms make neutral goods, and that enemies' bottoms make enemies' goods, are not only separable in their nature, but have been generally separated; and they are held, by the United States, to be distinct.

The Nereide, 9 *Cranch*, 388.

21. Consequently, a stipulation for the former rule, in a treaty, does not silently introduce the latter.

Ib.

22. Treaties are formed upon deliberate reflection. Diplomatic men read the public treaties made by other nations, and cannot be supposed either to omit or insert an article common in public treaties without being aware of the effect of such omission or insertion. Neither the one nor the other is to be ascribed to inattention. And if an omitted article be not necessarily implied in one which is inserted, the subject to which that article would apply remains under the ancient rule.

Ib., (419.)

23. Where a case involved the construction of a treaty, the court heard a third argument on the application of the executive department of the United States Government.

The Amiable Isabella, 6 *Wheaton*, 1.

24. The termination of a treaty by war does not divest rights of property already vested under it.

Treaties stipulating for a permanent arrangement of territorial and other national rights are at most suspended during war and revive at peace, unless they are waived by the parties, or new and repugnant stipulations are made.

Society, &c., vs. New Haven, 8 *Wheaton*, 464.

25. Though a treaty is the law of the land, and its provisions must be regarded by the courts as equivalent to an act of the legislature when it operates directly on a subject, yet if it be merely a stipulation for future legislation by Congress, it addresses itself to the political and not to the judicial department, and the latter must await the action of the former.

Foster vs. Neilson, 2 *Peters*, 253.

26. The original of the treaty with Spain of 1819, (Pub. Trs., 714,) in the Spanish language, not corresponding precisely with the original in English, the language of the former is to be taken as expressing the intent of the grantor as to the lands granted and reserved. The King of Spain was the grantor; the treaty was his deed; the exception was made by him; and its nature and effect depended on his intention, expressed by his words, in reference to the thing granted and the thing reserved, and excepted in and by the grant. The Spanish version was in his words and expressed his intention, and, though the American version showed the intention of this Government to be different, we cannot adopt it as the rule by which to decide what was granted, what excepted, and what reserved. We must be governed by the clearly expressed and manifest intention of the grantor and not the grantee in private, *a fortiori* in public, grants.

U. S. vs. Arredondo, 6 *Peters*, 691, (741.)

27. As respects performance of the conditions of a grant by a private grantee, the date of a treaty is the date of its final ratification.

Ib., (748.)

28. A treaty of cession is a deed or grant by one sovereign to another, which transfers nothing to which he had no right of property, and only such right as he owned and could convey to the grantee.

Mitchell vs. U. S., 9 *Peters*, 711.

29. This court has uniformly held that the term "grant" in a treaty comprehends not only those which are made in form, but also any concession, warrant, order, or permission to survey, possess, or settle, whether evidenced by writing or parol, or presumed from possession; and that in the term "laws" is included custom and usage, when once settled, though it may be "comparatively of recent date, and is not one of those to the contrary of which the memory of man runneth not, which contributed so much to make up the common-law code."

Strother vs. Lucas, 12 *Peters*, 436.

30. It is a sound principle of national law, and applies to the treaty making power of this Government, whether exercised with a foreign nation or an Indian tribe, that all questions of disputed boundaries may be settled by the parties to the treaty.

Lattimer vs. Poteet, 14 *Peters*, 14.

31. Native Africans unlawfully detained on board a Spanish vessel are not bound by a treaty, but may, as foreigners to both countries, assert their rights to liberty before our courts.

United States vs. The Amistad, 15 *Peters*, 518.

32. Every nation acquiring territory, by treaty or otherwise, must hold it subject to the constitution and laws of its own government, and not according to those of the government ceding it.

Pollard's Lessee vs. Hagan, 3 *Howard*, 225.

33. It is in accordance with the laws of nations, and has been affirmed by each department of this Government, that the treaty of San Ildefonso took effect on the day of its date.

Davis vs. The Police Jury of Concordia, 9 *Howard*, 280.

34. Whether the king of a foreign country with whom a treaty has been made had the power to conclude the treaty is a political, not a judicial question.

A treaty made in accordance with the Constitution cannot be disregarded in its provisions unless they infringe the Constitution.

Doe vs. Braden, 16 *Howard*, 635.

35. A treaty executed and ratified by the proper authorities of the Government becomes the supreme law of the land, and the courts can no more go behind it, for the purpose of annulling its effect and operation, than behind an act of Congress.

Fellows vs. Blacksmith, 19 *Howard*, 366, (372.)

36. On a conquest by one nation of another, and the subsequent surrender of the soil and change of sovereignty, those of the former inhabitants who do not remain and become citizens of the victorious sovereign, but, on the contrary, adhere to their old allegiance and continue in the service of the vanquished sovereign, deprive themselves of protection or security to their property except so far as it may be secured by treaty.

Hence, where, on such a conquest, a treaty provided that the former inhabitants who wished to adhere in allegiance to their vanquished sovereign, might sell their property, provided they sold it to a certain class of persons, and within a time named, the property, if not so sold, became abandoned to the conqueror.

United States vs. Repentigny, 5 *Wallace*, 211.

37. Although it is true, as a principle of international law, that, as respects the rights of either government under it, a treaty is considered as concluded and binding from the date of its signature, and that in this regard the exchange of ratifications has a retro-

active effect, confirming the treaty from its date, a different rule prevails where the treaty operates on individual rights. There, the principle of relation does not apply to rights of this character which were vested before the treaty was ratified, and in so far as it affects them it is not considered as concluded until there is an exchange of ratifications.

Haver vs. Yaker, 9 Wallace, 32.

38. The effect of treaties and acts of Congress, when in conflict, is not settled by the Constitution ; but the question is not involved in any doubt as to its proper solution. A treaty may supersede a prior act of Congress, (*Foster vs. Neilson*, 2 Peters, 314,) and an act of Congress may supersede a prior treaty. (*Taylor vs. Morton*, 2 Curtis, 454; *The Olinton Bridge*, 1 Walworth, 155.) In the cases referred to, these principles were applied to treaties with foreign nations.

The Cherokee Tobacco cases, 11 Wallace, 621.

39. War puts every individual of the respective governments, as well as the governments themselves, in a state of hostility with each other.

All treaties, contracts, and rights of property are suspended.

The Schooner Rapid and cargo, 1 Gallison, 303.

40. The stipulations in a treaty between the United States and a foreign nation are paramount to the provisions of the constitution of a particular State.

Lessee of Gordon vs. Kerr, 1 Washington, 322.

41. The operation of a treaty before ratification by the governing powers of the state by whose agents it has been signed considered.

The treaty of peace with Great Britain took effect upon the 20th of January, 1783, the date of its signature.

Hylton's Lessee vs. Brown, 1 Washington, 344.

42. The term "validity", as applied to treaties, admits of two descriptions—necessary and voluntary.

By the former is meant that which results from the treaties having been made by persons authorized by and for purposes consistent with the Constitution.

By voluntary validity, is meant that validity which a treaty, voidable by reason of violation by the other party, still continues to retain by the silent acquiescence and will of the nation. It is voluntary, because it is at the will of the nation to let it remain or to extinguish it.

Jones vs. Walker, 2 Paine, 688.

43. The principles which govern and decide the necessary validity of a treaty are of a judicial nature, while those on which its voluntary validity depends are of a political nature.

Id.

44. The power given to the judiciary to decide upon the validity of treaties is restricted to their necessary validity.

Ib.

45. When the political department of the Government deems it conducive to the national interest that a voidable treaty should be obeyed and observed, the judiciary cannot declare it void.

Ib.

46. A treaty is the supreme law of the land in respect of such matters only as the treaty-making power, without the aid of Congress, can carry into effect. Where a treaty stipulates for the payment of money, for which an appropriation is required, it is not operative in the sense of the Constitution. Every foreign government may be presumed to know that, so far as the treaty stipulates to pay money, the legislative sanction is required.

Turner vs. American Baptist Missionary Union, 5 McLean, 347.

47. By a principle of international law, on a transfer of territory by one nation to another, the political relations between the inhabitants of the ceded country and the former government are changed, and new ones arise between them and the new government. The manner in which this is to be effected is ordinarily the subject of treaty. The contracting parties have the right to contract to transfer and receive respectively the allegiance of all the native-born citizens; but the naturalized citizens, who owe allegiance purely statutory, are, when released therefrom, remitted to their original status.

Tobin vs. Walkinshaw, 1 McAllister, 186.

48. Though a treaty is the law of the land, under the Constitution of the United States, Congress may repeal it, so far as it is a municipal law, provided its subject-matter is within the legislative power of Congress.

Taylor vs. Morton, 2 Curtis, 454.

49. Congress may pass an act otherwise constitutional notwithstanding it conflicts with an existing treaty with a foreign nation, and if the act be plainly in conflict the court cannot inquire whether Congress had or had not the intention to pass an act in conflict with the treaty.

Ropes vs. Clinch, 8 Blatchford, 304.

50. The modes by which Congress may abrogate a treaty considered.

Ib.

51. The violation, by a citizen of the United States, of a treaty with a foreign state may be punished in the Federal courts by indictment.

Henfield's case, Wharton State Trials, 49.

TREATIES WITH PARTICULAR STATES.**AUSTRIA-HUNGARY.**

52. By article 1 of treaty of 1870 with the Austro-Hungarian monarchy, (Pub. Trs., 33,) the right of an American citizen to change his nationality and become a citizen of Austria is recognized, but he must have had a residence in that country of five years, and have been naturalized there, before the United States are bound to consider the person so naturalized an Austrian citizen.

Heinrich's case, 14 *Op.*, 154, *Williams*, (1872.)

53. A doubt might be suggested whether political burdens, such as military service, could rightfully be imposed by Austria upon a person who is by birth a citizen of this country, but who is residing in Austria, and is, by having been born of Austrian parents temporarily residing here, also an Austrian citizen, without the consent of that person, or without his signifying by some act or declaration his will to be a citizen of that country.

Id.

54. But the party in this case has consented to be an Austrian citizen, and this consent, together with the laws of that country, has effected a change in his nationality.

Id.

BAVARIA.

55. The convention between the United States and Bavaria of 1853 (Pub. Trs., 42) was not abrogated by the operation of the constitution of the German Empire of 1871.

In re Hermann Thomas, 12 *Blatchford*, 370.

CHINA.

56. The act of Congress of 1848, (9 Stat., 276, act 1860, substituted R. S., § 4083,) to carry into effect certain provisions of the treaties between the United States and China, not having designated any particular place for the confinement of prisoners arrested for crime, the same is left for regulation under section 5, or in the absence of regulation, to the discretion of the acting functionary.

Mr. Carr's Questions, 5 *Op.*, 67, *Toucey*, (1849.)

57. In virtue of the treaty with China of 1844, Articles XXI and XXV, (Pub. Trs., 121-122,) all citizens of the United States in China enjoy complete rights of extritoriality, and are amenable to no authority but that of the United States.

The subject of extritoriality and judicial authority in China considered.

Judicial Authority in China, 7 *Op.*, 495, *Cushing*, (1855).

58. The judicial authority of the United States commissioner to China is restricted to the five ports mentioned in the treaty with that nation of 1858. (Pub. Trs., 129.)

Authority of Commissioners to China, 9 Op., 294, Black, (1859.)

COLOMBIA.

59. Colombian vessels are entitled, under articles 6 and 31 of the treaty with that republic of 1824, (Pub. Trs., 151 and 157,) to make repairs in our ports when forced into them by stress of weather; but not to enlist recruits there, either from our citizens or from foreigners, except such as may be transiently within the United States.

The Libertador, 2 Op., 4, Wirt, (1825.)

60. The convention of 1864 with the United States of Colombia (Pub. Trs., 158) confers on the commission thereby created authority to decide the cases which had been presented within the time specified, and which had not been decided by the commission appointed under the convention with New Granada of 1857, (Pub. Trs., 564;) and therefore conferred jurisdiction to determine what cases had been presented to, but not decided by, the old commission.

Claims under Convention with Colombia, 11 Op., 402, Speed, (1865.)

COSTA RICA.

61. Under the twelfth section of the act of 1861, (12 Stat., 147,) to carry into effect the convention with Costa Rica of 1860, (Pub. Trs., 163,) certified copies or duplicates of papers filed in the State Department, and not translations, must be substituted by the commissioner of Costa Rica for the originals withdrawn by him.

Costa Rican Commission, 10 Op., 450, Bates, (1863.)

DENMARK.

62. There being no express provision for the surrender of deserting seamen in the convention of 1826, between the United States and Denmark, (Pub. Trs., 167,) the laws of the United States for the apprehension of deserters cannot be applied to deserters from a Danish vessel.

Deserter from the Danish ship Saga, 6 Op., 148, Cushing, (1853.)

FRANCE.

63. The issue of a warrant under the ninth article of the consular convention with France of 1788, (Pub. Trs., 222—annulled by act of 1798—1 Stat., 578,) is within the discretion of the district judge, and such discretion cannot be interfered with by the supreme court.

Case of Henry Barré, 1 Op., 55, Bradford, (1795.)

64. The French consul-general is not privileged from legal process by the consular convention with that country of 1788. (Pub. Trs., 219—annulled by act of 1798; 1 Stat., 578.)

Letombe's case, 1 Op., 77, Lee, (1797.)

65. The word "captured" in the fourth article of the treaty with France of 1800 (Pub. Trs., 225—expired by limitation) should not be construed to have the effect of the term "recaptured" in the sense of the treaty.

Case of a Portuguese Brig, 1 Op., 111, Lincoln, (1802.)

66. This treaty does not authorize that government to make any demands on the United States for property recaptured from it, and which they were obliged to restore to its original owners on the payment of salvage.

Id.

67. Where a French vessel was captured and condemned as lawful prize to the captors and to the United States in moieties prior to the treaty of 1800, (Pub. Trs., 224, expired by limitation,) and the avails were in the hands of the clerk of the court at the date of the treaty, and one moiety was paid to the captors, and one moiety has been paid into the Treasury after the signing of the treaty, and on hearing in the Supreme Court the decree was reversed, and the vessel ordered to be restored, and the moiety paid into the Treasury was paid over, Held, that the United States is not liable for the moiety paid to the captors.

The Schooner Peggy, 1 Op., 114, Lincoln, (1802.)

68. On a reconsideration of the case, and after examination of the opinion delivered in the Supreme Court, the preceding opinion substantially re-affirmed.

The Schooner Peggy, 1 Op., 119, Lincoln, (1802.)

69. Under the provisions of the convention with France of 1803, (Pub. Trs., 236,) the United States are not bound to protect demands for freight where individuals have transported articles for the French government or for its citizens, since they are within no provision of the convention.

Claims under treaty with France, 1 Op., 136, Lincoln, (1803.)

70. French consular jurisdiction in an American port depends on a correct interpretation of the treaties between the two countries, which limit it to the exercise of police over French vessels and jurisdiction in civil disputes.

Authority of French consul, 2 Op., 378, Berrien, (1830.)

71. The claim of the French envoy to the exercise of judicial power by the consuls of his government is not warranted by treaty or reciprocity.

Id.

72. The mode provided for the surrender of persons accused of the crimes mentioned in Article I of the treaty with France of 1843 (Pub. Trs., 247) is by requisition, made in the name of the respective parties through the medium of their respective diplomatic agents.

The rule of evidence as to the commission of the crime is prescribed in the treaty.

Formalities of extradition under French treaty, 4 Op., 330, Nelson, (1844.)

73. The United States cannot demand extradition in the case of a breach of trust in California, under the convention with France of 1843 for extradition, (Pub. Trs., 247,) which by the statute of that State is made grand larceny.

Mr. Joseph's application, 7 Op., 643, Cushing, (1856.)

74. The term "public officers" in the treaty with France of 1843, (Pub. Trs., 247,) or, as it stands in the French copy, "dépositaires publics," signifies officers or depositaries of the government only, and does not comprehend officers of a railroad company, notwithstanding the latter was authorized and subventioned by the French government.

Extradition—Public officers, 8 Op., 106, Cushing, (1856.)

75. Under the extradition treaty with France of 1843, Art. 2, (Pub. Trs., 248,) a public officer of the United States, who embezzles moneys of the United States intrusted to his care, and flies from justice to the territory of France, is liable to be removed to this country for trial, such crime being here punishable with infamous punishment.

Gilson's case, 12 Op., 326, Stanbery, (1867.)

76. Under the nineteenth article of the treaty with France of 1778, (Pub. Trs., 209, annulled by act of 1798, 1 Stat., 578,) a French privateer has a right to make repairs in our ports. The replacement of her force is not an augmentation.

Moodie vs. The Ship Phæbe Anne, 3 Dallas, 319.

77. Condemnation of a prize, subject to an appeal, is not final, and so not definitive within the meaning of the fourth article of our treaty with France of 1801. (Pub. Trs., 225, expired.)

United States vs. Schooner Peggy, 1 Cranch, 103.

78. The convention with France of 1800, (Pub. Trs., 244, expired by limitation,) enabling people of one country holding lands in the other to dispose of the same by testament or otherwise, and to inherit lands in the respective countries without being obliged to obtain letters of naturalization, rendered the performance of the condition required by the law of Maryland, to sell to a citizen within ten years, a useless formality, and the conventional rule applied equally to the case of those who took by descent under the act, as to those who acquired by purchase without its aid.

Chirac vs. Lessee of Chirac, 2 Wheaton, 259.

79. The further stipulation in the convention, "That in case the laws of either of the two states should restrain strangers from the exercise of the rights of property with respect to real estate, such real estate may be sold, or otherwise disposed of, to citizens or inhabitants of the country where it may be," was held not to affect the right of a French subject, who takes or holds by the convention, so as to deprive him of the power of selling to citizens of this country; and it was held to give to a French subject, who had acquired lands by descent, or devise, (and perhaps in any other manner,) the right, during life, to sell or otherwise dispose thereof, if lying in a state where lands purchased by an alien would be immediately escheatable.

Ib.

80. Although the convention of 1800 has expired by its own limitation, yet the instant the descent was cast on a French subject during its continuance, his rights became complete under it, and could not be affected by its subsequent expiration.

Ib.

81. In the treaty of 1803 with France, (Pub. Trs., 232,) by which Louisiana was acquired, the United States stipulated that the inhabitants of the ceded territory should be protected in the free enjoyment of their property. The United States, as a just nation, regard this stipulation as the avowal of a principle which would have been held equally sacred, though it had not been inserted in the contract.

The term "property," as applied to lands, comprehends every species of title inchoate or complete. It is supposed to embrace those rights which lie in contract; those which are executory as well as those which are executed.

Soulard vs. United States, 4 Peters, 511.

Delassus vs. United States, 9 Peters, 117.

82. The stipulation in the treaty of cession of Louisiana for the protection of the inhabitants in their property, &c., ceased to operate when that State was admitted into the Union.

City of New Orleans vs. Armas and Cucullu, 9 Peters, 223.

83. The treaty of cession of Louisiana to the United States (Pub. Trs., 232) could not enlarge the constitutional powers of the latter, and those powers do not enable the United States to have or exercise that police control over public places in the State of Louisiana which belonged to the Crown of France or of Spain.

New Orleans vs. United States, 10 Peters, 662, [737.]

84. Under the act of Congress constituting a board of commissioners to pass on claims provided for by the treaty with France of 1831, (Pub. Trs., 245,) the decision of the board between conflicting claimants is not conclusive, and the question of their respective titles is fully open to be adjudicated by the courts.

Frevall vs. Bache, 14 Peters, 95.

85. Incomplete Spanish titles were not rendered complete by the treaty by which Louisiana was acquired, (Pub. Trs., 232;) the Government of the United States succeeded to the powers and duties of the Crown of Spain as to the confirmation of such titles, and where there were two adverse claimants might select between them, and make a perfect title to one and wholly exclude the other.

Chouteau vs. Eckhart, 2 Howard, 344.

86. The treaty between the United States and France for the acquisition of Louisiana (Pub. Trs., 232) confirmed titles as they existed under the local law; and the decision of the supreme court of Louisiana, upon a question of boundary of one of the grants made before the treaty, cannot be considered as denying a title claimed under a treaty, but only as applying that title, whose existence is admitted, to the land.

McDonogh vs. Millaudon, 3 Howard, 693.

87. The treaty of St. Ildefonso, between Spain and France, of the 1st of October, 1800, deprived Spain of the power to make grants of land in Louisiana, if not after its date, certainly after 21st March, 1801.

United States vs. Reynes, 9 Howard, 127.

88. The treaty of Paris ceding Louisiana to the United States (Pub. Trs., 232) took effect on the day of its date, 30th April, 1803. Its subsequent ratification and the formal transfer of possession have relation to that date.

Ib.

89. The laws of Louisiana impose a tax of ten per cent. on the value of all property inherited in that State by any person not domiciliated there, and not being a citizen of any State or Territory of the United States.

In 1853 a treaty was made with France (Pub. Trs., 249) by which Frenchmen were placed, as regards property, upon the same footing as citizens of the United States in all the States of the Union whose laws permit it. Held, that this treaty has no effect upon the succession of a person who died in 1848.

Prevost vs. Greneaux, 19 Howard, 1.

GREAT BRITAIN.

90. The term "prosecutions" employed in the sixth article of the treaty of 1782 with Great Britain (Pub. Trs., 263) imports a suit against another in a criminal cause; such prosecutions being conducted in the name of the public, the ground of them being distinctly known as soon as they are instituted, and being always under the control of the Government.
Capt. Cochran's Case, 1 Op., 50, Bradford, (1794.)
91. The benefits of the 19th article of the treaty of 1778 with France (Pub. Trs., 209, annulled by act of 1798, 1 Stat., 578) cannot be, and never were intended to be, impaired by anything in our treaty of 1794 with Great Britain, (Pub. Trs., 280, expired by limitation,) and, therefore, the 24th article of the last-mentioned treaty may be considered inoperative upon the question of the right of this Government to permit the sale of a part of a prize cargo for the necessary reparation of the ship.
Reparation of prize ships, 1 Op., 67, Lee, (1796.)
92. The provisions of the 6th article of the treaty with Great Britain of 1794 (Pub. Trs., 272) implies that public officers should furnish copies of papers when demanded, and should assist in bringing forward testimony according to the duties of their several stations; and, also, that individuals should not refuse to give testimony. A law ought to be passed to require these things to be done.
Obligations under treaty, 1 Op., 82, Lee, (1798.)
93. By the 27th article of treaty of 1794, (Pub. Trs., 281,) a requisition from the British minister is not authorized unless the persons demanded are charged with murder or forgery, committed within the territorial jurisdiction of Great Britain.
Case of Brigstock and others, 1 Op., 83, Lee, (1798.)
94. Under the 23d article of the treaty with Great Britain of 1794, (Pub. Trs., 280, expired by limitation,) as well as by the law of nations, it is lawful to serve either a criminal or civil process upon a person on board a British man-of-war lying within our territory.
The Chesterfield, 1 Op., 87, Lee, (1799.)
95. The provisions in the 3d article of the treaty with Great Britain of 1794, (Pub. Trs., 269,) relating to duties on goods and merchandise, cannot be extended to tonnage duties.
Duties under treaty of 1794, 1 Op., 155, Breckenridge, (1806.)
96. The first article of the treaty of 1815, (Pub. Trs., 293,) providing for mutual freedom and liberty of commerce, cannot be construed to imply an obligation to protect the rights of foreign owners of slaves brought to our shores as seamen.
Slaves on British vessels, 2 Op., 475, Taney, (1831.)

97. A commissioner for the United States, appointed by the circuit court, is a magistrate within the meaning of the treaty of article 10 of treaty of Washington with Great Britain of 1842, (Pub. Trs., 320,) and, as such, has power to apprehend, examine, and certify as to fugitives from justice. The necessary formalities and procedure for extradition under the treaty considered.

Case of Christiana Cochrane, 4 Op., 201, Nelson, (1843.)

98. Under the second article of the treaty of 1794 with Great Britain, (Pub. Trs., 269,) a British subject, held to have elected to become a citizen of the United States by remaining therein, without having declared his intention to continue to be a British subject, did not become, *ipso facto*, a citizen of the United States. He could do so only by becoming naturalized in accordance with section 2 of the act of 29th January, 1795. (1 Stat., 414.)

Porlier's case, 5 Op., 716, Appendix, Wirt, (1819.)

99. The salary of the American commissioner appointed under the 6th article of the treaty with Great Britain of 1853 (Pub. Trs., 329,) commenced on his taking the oath of office, and he is entitled to the cost of transportation to and from London.

Case of British and American commissioners, 6 Op., 65, Cushing, (1853.)

100. Larceny is not included in the causes for extradition stipulated between Great Britain and the United States by article 10 of the treaty with Great Britain of 1842, (Pub. Trs., 320,) and the United States should not ask for extradition in such a case as an act of mere comity.

Wing's case, 6 Op., 85, Cushing, (1853.)

101. Under the reciprocity treaty between the United States and Great Britain of 1854, (Pub. Trs., 329,) the President cannot issue his proclamation giving effect to the treaty as to Canada alone, in anticipation of the action of New Brunswick, Nova Scotia, and Prince Edward's Island, nor until he shall have received evidence, not only of the action of these provinces, but also of the Imperial Parliament.

Reciprocity treaty with Great Britain, 6 Op., 748, Cushing, (1854.)

102. Under the tenth article of the treaty of 1842 with Great Britain, (Pub. Trs., 320,) the expenses attending the proceedings in extradition are to be borne by the demanding government.

Heilbronn's case, 7 Op., 396, Cushing, (1855.)

103. There is nothing in the convention between the United States and Great Britain of 1850 (Pub. Trs., 322) which forbids either of the contracting parties to intervene, if either of them see fit, by alliances, influence, or even by arms, in the affairs of Central America.

The Clayton-Bulwer treaty, 8 Op., 436, Cushing, (1853.)

104. Robbery on the lakes is piracy within the meaning of our extradition treaty with Great Britain of 1842. (Pub. Trs., 320.)
Lake Erie pirates, 11 *Op.*, 114, *Bates*, (1864.)
105. So much of article 30 of the treaty between the United States and Great Britain of 1871, (Pub. Trs., 365,) called the treaty of Washington, as relates to the transportation of merchandise in British vessels without payment of duty, from one port or place within the territory of the United States, to another port or place within the same territory, examined and construed.
Transportation in bond under treaty Washington, 14, *Op.*, 310, *Williams*, (1873.)
106. The tenth article of the treaty of 1842 with Great Britain, (Pub. Trs., 320,) does not forbid the trial of a fugitive when surrendered for an offense other than that for which the surrender was made.
Lawrence's case, — *Op.*, *Phillips*, acting, *July*, (1875.)
107. The practice and decisions in the United States and in Canada, and the understanding of the executive and judicial authorities of Great Britain, have all agreed that fugitives surrendered under the treaty are surrendered absolutely, and may be tried for offenses other than the particular offense for which they were surrendered.
Ib.
108. Debts due to British subjects before the war, though sequestered or paid into the State treasuries, revived by the treaty of peace of 1783, (Pub. Trs., 266,) and the creditors are entitled to recover.
Georgia vs. Brailsford, 3 *Dallas*, 1.
109. The act of the legislature of Virginia of 1799, entitled "An act concerning escheats and forfeitures from British subjects," under which a debtor to a subject of Great Britain, during the war, paid over to the State authority a portion of the debt due, did not protect the debtor from a suit for the debt after the treaty of 1783. (Pub. Trs., 266.)
Ware vs. Hylton, 3 *Dallas*, 199.
110. The statute, if valid, was annulled by the treaty, and under the fourth article suits for the recovery of debts due might be maintained, the provisions of the statute of Virginia to the contrary notwithstanding.
Ib.
111. A debt due to a British subject not being barred by a statute of limitations at the commencement of the war in 1775, the treaty of peace with Great Britain of 1783 (Pub. Trs., 266) does not allow the time previous to the war to be added to any time subsequent to the treaty in order to make a bar.
Hopkirk v. Bell, 3 *Cranch*, 454, [458.]

112. Under article 18 of the treaty with Great Britain of 1794, (Pub. Trs., 278,) an intention to enter a blockaded port is not cause for condemnation.

Fitzsimmons vs. Newport Ins. Co., 4 Cranch, 185, [200.]

113. The several States which compose the Union, so far at least as regarded their municipal regulations, became entitled from the time when they declared themselves independent to all the rights and powers of sovereign States, and did not derive them from concessions of the British King.

The treaty of peace contains a recognition, not a grant, of the independence of those States.

The laws of the several State governments passed after the Declaration of Independence were the laws of sovereign States, and as such obligatory upon the people of each State.

McIlvaine vs. Cox's Lessee, 4 Cranch, 209.

114. Article 5 of the treaty of peace with Great Britain of 1783 (Pub. Trs., 262) saved the lien of a mortgage upon confiscated lands which at the time remained unsold.

Higginson v. Mein, 4 Cranch, 415, [419.]

115. The "interest in lands by debts" intended to be protected by article 5 of the treaty of peace with Great Britain of 1783, (Pub. Trs., 262,) must be an interest held as security for money at the time of the treaty.

Owings vs. Norwood's Lessee, 5 Cranch, 344

116. The effect of the treaty of peace of 1783 with Great Britain, and of treaty of 1794, (Pub. Trs., 266, 269,) in protecting titles of British subjects to lands in Virginia considered.

Fairfax's Devisee vs. Hunter's Lessee, 7 Cranch, 603.

Craig vs. Bradford, 3 Wheaton, 594.

117. Under the 9th article of the treaty of 1794 with Great Britain, (Pub. Trs., 269,) by which it is provided that British subjects holding lands in the United States and their heirs, so far as respects those lands, and the remedies incident thereto, should not be considered as aliens, the parties must show that the title to the land for which the suit was commenced was in them, or in their ancestors, at the time the treaty was made.

It is not necessary to show seisin in fact, or actual possession. The treaty applies to the title, whatever it is.

Harden vs. Fisher, 1 Wheaton, 300.

Orr vs. Hodgson, 4 Wheaton, 453, [463.]

Hughes vs. Edwards, 9 Wheaton, 489, [496.]

118. Article 6 of the treaty of peace with Great Britain of 1783 (Pub. Trs., 268) protected from forfeiture, by reason of alienage, lands then held by British subjects.

Orr vs. Hodgson, 4 Wheaton, 453.

119. Article 9 of the treaty of 1794, (Pub. Trs., 274,) under the word heir, did not include any other than British subjects or American citizens at the time of the descent cast.

Ib.

120. British subjects born before the Revolution are incapable of inheriting or transmitting lands in this country, save by force of some treaty.

Both the treaty of peace with Great Britain of 1783 (Pub. Trs., 266) and the treaty of 1794 (Pub. Trs., 269) provided only for titles then existing.

Blight's Lessee vs. Rochester, 7 *Wheaton*, 535.

121. Effect of the treaty of 1783 with Great Britain, (Pub. Trs., 266,) and treaty of 1795 with Spain, (Pub. Trs., 704,) as to lands occupied by Indians.

Johnson and Graham's Lessee vs. McIntosh, 8 *Wheaton*, 543.

122. The property of British corporations in this country is protected by the 6th article of the treaty of peace of 1783 (Pub. Trs., 266) in the same manner as the property of natural persons, and the title thus protected is confirmed by the 9th article of the treaty of 1794, (Pub. Trs., 274,) so that it could not be forfeited by any intermediate legislative act or other proceeding for the defect of alienage.

Society for Propagating the Gospel, &c., vs. New Haven, 8 *Wheaton*, 464.

123. The United States acquired no new rights of soil or sovereignty by the treaty of peace with Great Britain after the Revolution. (Pub. Trs., 266.) The treaty of peace operated only as an acknowledgment of existing rights, and on that principle the soil and sovereignty, within the acknowledged limits of the United States, were as much theirs at the Declaration of Independence as at the execution of the treaty.

Harcourt vs. Gaillard, 12 *Wheaton*, 523, [529.]

124. All British-born subjects who have never renounced allegiance to Great Britain ought, on general principles of interpretation, to be held to be within the intent, as they certainly are within the words, of the treaty of 1794. (Pub. Trs., 269.)

Shanks vs. Dupont, 3 *Peters*, 242, [250.]

125. The treaty of 1783 (Pub. Trs., 266) acted upon the actual state of things as it existed at that period. All those, whether natives or otherwise, who adhered to the American States were virtually absolved from all allegiance to the British Crown. All who adhered to the Crown were deemed and held subjects of the Crown.

Ib., [254.]

126. Lands granted by the acts of March 3, 1807, (2 Stat., 437,) in fulfillment of the second article of the treaty of 1794, (Pub. Trs., 270,) were not donations.

Forsyth vs. Reynolds, 15 *Howard*, 358.

127. By the treaty of 1783 (Pub. Trs., 266) the United States succeeded to all the rights of the King of France in that part of Canada which forms the State of Michigan, prior to its conquest in 1750.

United States vs. Repentigny, 5 *Wallace*, 211.

128. Under the treaty with Great Britain of 1842, (Pub. Trs., 320,) and the acts of Congress for carrying into effect its stipulations, no authority is required from the executive department of the United States to enable a judge, magistrate, or commissioner to issue a warrant for the arrest of an alleged fugitive from justice.

Ex parte Ross, 2 *Bond*, 252.

129. The convention of 1854 for mutual reciprocity of trade with Canada, (Pub. Trs., 329, terminated by notice,) did not operate to release a forfeiture previously incurred.

Pine lumber, 4 *Blatchford*, 182.

130. Where a criminal is surrendered under the treaty of 1842 (Pub. Trs., 320) for a particular offense, he is not thereby protected from trial for an offense other than the offense for which he was surrendered.

Caldwell's case, 8 *Blatchford*, 131.

Lawrence's case, circuit court southern district N. Y., *March*, 1876.

131. No special act of Congress is necessary to carry into effect the tenth article of the treaty of 1842 with Great Britain, (Pub. Trs. 320,) and a portion of a British crew may be arrested and surrendered without legislation to carry out the treaty.

Case of the British prisoners, 1 *Woodbury & Minot*, 66.

132. There is nothing in the treaties with Great Britain which accords to a British merchant resident in a port in the seceded States, during the war, an immunity from the general principles of public law applicable to resident neutral merchants.

The Sarah Starr, *Blatchford's Prize Cases*, 69.

133. A case arising upon the construction of the decision of the commissioners under the fourth article of the treaty of Ghent. (Pub. Trs., 288.) The small island called Pope's Folly, in the bay of Passamaquoddy, is within the jurisdiction of the United States.

An open boat and cargo, *Ware's Rep.*, 26.

134. By article 3 of the convention with Great Britain of 1818, (Pub. Trs., 297,) it was agreed that the Oregon territory should "be free and open to the vessels, citizens, and subjects of the two

powers," which convention was continued in force until the convention of 1846, (Pub. Trs., 320 :) Held, That during the period of such joint occupation, the country, as to British subjects therein, was British soil, and subject to the jurisdiction of the King of Great Britain; but, as to citizens of the United States, it was American soil, and subject to the jurisdiction of the United States; and that a child born in such territory in 1823, of British subjects, was born in the allegiance of the King of Great Britain, and not in that of the United States.

McKay vs. Campbell, 2 Sawyer, 118.

HANSEATIC REPUBLIC.

135. Under article 9 of the treaty with the Hanseatic Republics of 1827 (Pub. Trs., 402,) together with article 4 of the treaty with Belgium of 1858, (Pub. Trs., 53,) steam-vessels of Bremen, plying regularly between that port and the United States, have, during the entire period subsequent to the date of the ratification of said treaty with Belgium, been exempt from tonnage-tax in American ports, by force of article 9 of said treaty with the Hanseatic Republics, and are entitled to a refund of any such tax which has been collected from such vessels in American ports at any time within that period.

North German Lloyd Steamship Company, 14 Op., 530, Williams, (1875.)

ITALY.

136. Under the convention between the United States and Italy of 1868, (Pub. Trs., 436,) a person may be surrendered for the crime of murder committed before the making of the convention.

In re Angelo de Giacomo, 12 Blatchford, 391.

JAPAN.

137. A United States consular court in Japan cannot, under the treaty of 1858 with that country, (Pub. Trs., 452,) and the laws of the United States, (12 Stat., 72; R. S., § 4083,) render a judgment against a person of foreign birth not a citizen of the United States.

Consular courts in Japan, 11 Op., 474, Speed, (1866.)

MEXICO.

138. The Mesilla treaty with the Mexican Republic (Pub. Trs., 503) construed.

Construction of the Mesilla treaty, 7 Op., 582, Cushing, (1855.)

139. The question whether the United States will pay, according to their original tenor, drafts drawn by the Mexican government, under the Mesilla convention, or suspend the payment at the subsequent request of that government, is matter of political, not of legal, determination.

Drafts under Mesilla treaty, 7 Op., 599, Cushing, (1855.)

140. The treaty of Guadalupe Hidalgo (Pub. Trs., 492) provides for those Mexicans who inhabited territory ceded to the United States, but had no relation to Texas.

McKinney vs. Saviego, 18 Howard, 235.

141. The United States have never sought by their legislation to evade the obligation devolved upon them by the treaty of Guadalupe Hidalgo to protect the rights of property of the inhabitants of the ceded territory or to discharge it in a narrow and illiberal manner. They have directed their tribunals in passing upon the rights of the inhabitants to be governed by the stipulations of the treaty, the law of nations, the laws, usages, and customs of the former government, the principles of equity, and the decisions of the Supreme Court, so far as they are applicable.

United States vs. Anguisola, 1 Wallace, 352, [358.]

142. The cession of California to the United States did not impair the rights of private property. These rights were consecrated by the law of nations and protected by the treaty of Guadalupe Hidalgo.

United States vs. Moreno, 1 Wallace, 400.

143. Article 7 of the treaty of 1848, between the United States and Mexico, (Pub. Trs., 492,) stipulated that the navigation of the river Bravo (otherwise called the Rio Grande) should be free and common to the citizens of both countries, without interruption by either without the consent of the other, even for the purpose of improving the navigation. Nothing short of an express declaration by the Executive would warrant a court in ascribing to the Government an intention to blockade such a river in time of peace between the two republics.

The Peterhoff, 5 Wallace, 51.

144. The treaty of Guadalupe Hidalgo between the United States and Mexico (Pub. Trs., 492) makes no distinction, in the protection it provides, between the property of individuals and the property held by towns under the Mexican government.

Townsend vs. Greeley, 5 Wallace, 326.

145. The protection which by the treaty of Guadalupe Hidalgo the United States promised to Mexican grantees extended to rights which they then held.

Henshaw vs. Bissell, 18 Wallace, 264.

NETHERLANDS.

146. It seems there is no treaty stipulation between the United States and the Netherlands on the subject of the rights by inheritance of the children of a deceased child of a Netherlander dying intestate in the United States. Article 6 of the treaty of 1782 (Pub. Trs., 533) relates only to personalty.

Inheritance by alien Netherlanders, 12 Op., 5, Stanbery, (1866.)

NEW GRANADA.

147. The words of the treaty with New Granada (of 1846, Pub. Trs., 550) are not the test by which to determine what is or what is not within the true limits of the Isthmus of Panama, with reference to the exclusive right of a company to make a railroad across that isthmus. The act of the New Granadian government conceding such exclusive right must be construed so as to give such company that right within the true geographical boundaries of the isthmus named.

The Chiriqui Co., 9 *Op.*, 391, *Black*, (1859.)

148. The 35th article of the treaty of 1846 with New Granada (Pub. Trs., 558) binds this Government absolutely to guarantee the perfect neutrality of the Isthmus of Panama, on the demand of the proper party; and this obligation must be performed by any and all means which may be found lawful and expedient.

Neutrality of the Isthmus, 11 *Op.*, 67, *Bates*, (1864.)

149. Article 35 of the treaty of 1846 with New Granada (Pub. Trs., 558) does not oblige this Government to protect the Isthmus of Panama from invasion by a body of insurgents from the United States of Colombia.

Isthmus of Panama, 11 *Op.*, 391, *Speed*, (1865.)

150. The claim of R. W. Gibbes having been duly referred to the commissioners under the convention with New Granada of 1857, (Pub. Trs., 564,) and submitted to the umpire, who reported an award during the existence of the commission, and payment having been suspended by request of the Secretary of State, and the case having been afterward referred, without the claimant's consent, to the commission under the convention with Colombia of 1864, (Pub. Trs., 158,) as the representative of the late republic of New Granada: Held, that, by the submission of this claim to the latter commission in the manner stated, the claimant was not divested of his rights against New Granada under the award of the umpire aforesaid.

Claim of R. W. Gibbes, 13 *Op.*, 19, *Hoar*, (1869.)

151. The award not having been vacated, opened, or set aside during the life-time of the former commission, and the claimant having done nothing since to waive his rights thereunder, it should be treated by our Government as a valid and conclusive ascertainment of his claim against New Granada.

Id.

152. The passenger-tax of two dollars per head levied in 1849 and subsequent years by the state of Panama, a province of New Granada,

under authority from that republic, upon the captains of all vessels embarking or disembarking passengers in that state, was in substance and effect, so far as it affected citizens of the United States passing across the Isthmus of Panama, a violation of the 35th article of the treaty with New Granada of 1846. (Pub. Trs., 558.)

Panama transit-tax, 13 Op., 547, *Akerman*, (1871.)

NORTH GERMAN CONFEDERATION.

153. A citizen of the North German Confederation who becomes a naturalized citizen of the United States must have had an uninterrupted residence of five years in the United States before he is entitled to the immunities guaranteed by the treaty with the confederation of 1868. (Pub. Trs., 575.) The recital contained in the record of the naturalization proceedings that he had resided continuously in this country for more than five years is not conclusive as to the fact so recited.

Case of Moses Stern, 13 Op., 376, *Akerman*, (1871.)

154. A Prussian subject by birth emigrated to the United States in 1848, became naturalized in 1854, and in the following year had a son born in Saint Louis, Mo. Four years after the birth of his son he returned to Germany with his family, including this infant child, and became domiciled at Wiesbaden, in Nassau, where he has continuously resided. In 1866 Nassau became incorporated into the North German Confederation. When the son reached the age of 20 years he was called upon by the German government to report for military duty. Thereupon the intervention of the legation of the United States was invoked on the ground that the son was a native American citizen.

Article 6 of the naturalization treaty of 1868, between the North German Union and the United States, (Pub. Trs., 575,) provides that "if a German, naturalized in America, renews his residence in North Germany, without the intent to return to America, he shall be held to have renounced his naturalization in the United States. * * * The intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country."

Under this treaty, and according to the American rule declared in section 1999 of the Revised Statutes, the father renounced his naturalization in America and became a German subject. By virtue of the German laws, his son, being a minor, also acquired German nationality. Having at the same time an American nationality, he thus had a double nationality.

Being domiciled with his father, and being, as a minor, subject to him, according to both German and American law, and receiv-

ing German protection, and declining to give any assurance of intention to return to and reside in the United States, the son cannot now invoke the aid of the Government of the United States. But, when he reaches the age of twenty-one years, he may elect whether he will return to and take the nationality of his birth, with its duties and privileges, or retain the nationality acquired by the act of his father. No act of his father can have the effect, under the treaty, to deprive him of his nationality by birth.

Steinkauler's case, — *Op.*, *Pierrepoint*, June 26, (1875.)

OTTOMAN EMPIRE.

155. The act of Congress of 1848 (9 Stat., 276, 468, superseded) to carry into effect certain provisions in the treaties between the United States and the Ottoman Porte, (Pub. Trs., 583,) giving certain judicial powers to ministers and consuls not having designated a particular place for the confinement of prisoners, the same is left for regulation under section five of the act, or to the discretion of the acting functionary.

Mr. Carr's inquiries, 5 *Op.*, 67, *Toucey*, (1849.)

156. The provisions of the 18th section do not apply to Turkey.

Ib.

157. Citizens of the United States by virtue of the provisions of the treaty of 1830 with the Ottoman Empire, (Pub. Trs., 583,) enjoy in common with all other Christians the privilege of extraterritoriality in Turkey, including Egypt, in the Turkish regencies of Tripoli and Tunis, and in the independent Arabic states of Morocco and Muscat.

Americans in Turkey, 7 *Op.*, 565, *Cushing*, (1855.)

158. The treaty between the United States and the Ottoman Empire, concluded June 5, 1862, (Pub. Trs., 585,) if not that made in 1830, (Pub. Trs., 583,) has the effect of conceding to the United States the same privilege, in respect to consular courts and the civil and criminal jurisdiction thereof, which is enjoyed by other Christian nations; and the act of Congress of June 22, 1860, established the necessary regulations for the exercise of such jurisdiction. But, as this jurisdiction is, in terms, only such as is allowed by the laws of Turkey, and its usages in its intercourse with other nations, those laws or usages must be shown in order that the precise extent of such jurisdiction may be known.

Dainese vs. Hale, 91 *U. S. R.*, S. C., 13.

[See, however, act of March 23, 1874, (18 Stat., 23,) authorizing the President to accept the jurisdiction of certain mixed tribunals, and the proclamation thereon of March 27, 1876.]

PERU.

159. Under the treaty of 1851 with Peru (Pub. Trs., 612) the United States are not bound to pay a consul of the Peruvian government the value of property belonging to a deceased Peruvian, on whose estate the consul was entitled to administer, which may have been unjustly detained and administered by a local public administrator.

Verjel's case, 9 Op., 383, Black, (1859.)

160. An award under the convention with Peru of 1863, (Pub. Trs., 628,) "payable in current money of the United States," may legally be paid in Treasury notes or in specie.

Payments under treaties, 11 Op., 52, Bates, (1864.)

PORTUGAL.

161. The second article of the treaty with Portugal, of 1840, (Pub. Trs., 634,) did not restrict either party from laying discriminating duties on merchandise not the growth or production of the nation of the vessel carrying the same into the port of the other nation, and the provision in schedule I of the tariff act of 30 July, 1846, (9 Stat., 49,) exempting tea and coffee from duty, when imported direct from the place of their growth or production in American vessels, or in foreign vessels entitled by reciprocating treaties to be exempt from discriminating duties, tonnage, and other charges, does not apply to such articles when imported in Portuguese vessels.

Oldfield vs. Marriott, 10 Howard, 146.

PRUSSIA.

162. Under the treaty with Prussia, of 1852, (Pub. Trs., 660,) the forging of checks on the communal chest of Breslau constitutes one of the crimes for which the mutual extradition of fugitives from justice is stipulated.

Richard Sachs's case, 6 Op., 761, Cushing, (1854.)

163. The provisions of the treaty of 1828, (Pub. Trs., 656,) between the United States and Prussia, for the arrest and imprisonment of deserters from public ships and merchant vessels of the respective countries, applies to public vessels sailing under the flag of the North German Union, and deserters from such vessels.

Deserters from the "Niobe", 12 Op., 463, Evarts, (1868.)

64. A crime committed by a Prussian subject in Belgium, although justiciable in Prussia, does not come within the provisions of the treaty between the United States and Prussia of 1852 (Pub. Trs., 660) for the delivery up of persons who, being charged with certain crimes "committed within the jurisdiction of either party," shall be found within the territories of the other.

Carl Vogt's case, 14 Op., 281, Williams, (1873.)

165. Unless treaty stipulations provide otherwise, a merchant-vessel of one country visiting the ports of another for the purpose of trade is, so long as she remains, subject to the laws which govern them.

United States vs. Diekelman, 92 U. S. R., S. C., 520.

166. Where, in time of war, a foreign vessel, availing herself of a proclamation of the President of May 12, 1862, entered the port of New Orleans, the blockade of which was not removed, but only relaxed in the interests of commerce, she thereby assented to the conditions imposed by the proclamation that she should not take out goods contraband of war, nor depart until cleared by the collector of customs according to law.

Id.

167. Where the detention of the vessel in port was caused by her resistance to the orders of the properly-constituted authorities, whom she was bound to obey, she preferring such detention to a clearance upon the conditions imposed: Held, that her owner, a subject of Prussia, is not entitled to any damages against the United States, under the law of nations or the treaty with that power of 1799, (Pub. Trs., 648, and Treaty of 1828, *id.*, 656.)

Id.

168. Article 10 of the treaty with Prussia of 1828 (Pub. Trs., 658) provides that the consuls, vice-consuls, and commercial agents of each party "shall have the right, as such, to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities," subject to the right of the contending parties "to resort, on their return, to the judicial authority of their country," and to the right of the consuls, vice-consuls, and commercial agents to require the assistance of the local authorities "to cause their decisions to be carried into effect or supported." The crew of a Prussian vessel sued *in rem*, in admiralty, in the district court, to recover wages alleged to be due to them. The master of the vessel answered, denying the debt, invoking the protection of said treaty, denying the jurisdiction of the court, and averring that the claim for wages had already been adjudicated by the Prussian consul at New York. The consul also protested formally to the court against the exercise of its jurisdiction. The case was tried in the district court, and it appeared that the consul had adjudicated on the claim for wages. The district court decreed in favor of the libellants: Held, that the district court had no jurisdiction of the case.

The Elwine Kreplin, 9 Blatchford, 438.

RUSSIA.

169. The rights of Hutchinson, Kohl & Co., as purchasers of certain buildings in Alaska from the Russian-American Company, considered.

The use of the lands on which the buildings stood, once allowed to the Russian-American Company, was extinguished by the treaty of 1867, (Pub. Trs., 671,) and did not pass to Hutchinson, Kohl & Co.

Case of Hutchinson, Kohl & Co., 14 Op., 302, Williams, (1873.)

170. Although article 6 of the treaty with Russia of 1832 (Pub. Trs., 666) stipulated that no higher duties should be imposed on goods imported from Russia than on like articles imported from other places, if Congress has imposed a different duty upon Russian hemp, the law must be enforced.

Taylor vs. Morton, 2 Curtis, 454.

171. Congress may pass any law, otherwise constitutional, notwithstanding it conflicts with an existing treaty with a foreign nation.

If an act of Congress is plainly in such conflict, a court cannot inquire whether, in passing such act, Congress had or had not an intention to pass a law inconsistent with the provisions of the treaty.

Ropes vs. Clinch, 8 Blatchford, 304.

172. Modes specified in which Congress may destroy the operative force of a treaty.

Ib.

173. It being provided by article 6 of the treaty between the United States and Russia, of 1832, (Pub. Trs., 667,) that no higher duties shall be imposed on the importation into the United States of any article the produce or manufacture of Russia than are or shall be payable on the like article being the produce or manufacture of any other foreign country, and Congress having, by section 1 of act 1861, (12 Stat., 292,) imposed a duty on unmanufactured Russian hemp of forty dollars per ton, and on manila and other hems of India of twenty-five dollars per ton, such legislation is a declaration by Congress that such provision of the treaty shall no longer operate as the law of the land in respect to the duty on unmanufactured Russia hemp.

Ib.

SPAIN.

174. The 20th article of the treaty with Spain of 1795 (Pub. Trs., 709) does not extend the jurisdiction of our courts to offenses committed in Spain nor *vice versa*, and according to the common law, the commandant of the island of Amelia is not liable to any public prosecution before any of our courts for his transactions in Florida.

Rosa's case, 1 Op., 68, Lee, (1797.)

175. A Spanish grant made December 2, 1820, was made in violation of the 8th article of the treaty of 1819. (Pub. Trs., 714.)
Arredondo's case, 2 Op., 191, Wirt, (1829.)
176. Certain slaves were shipped by their Spanish owners from Havana to Pensacola in an American vessel in violation of the laws of the United States. The vessel was captured by the American military force then occupying Fort Barrancas. Afterward, while proceeding to adjudication, the slaves and vessel were seized by a revenue vessel and carried into the port of Mobile. The vessel and cargo were condemned, but restitution of the slaves was awarded, because the original capture was not made by a "commissioned vessel of the United States." The original capture being lawful, and the slaves though restored being on board unlawfully, the Spanish owners have no claim as for an "injury" under the treaty with Spain of 1819. (Pub. Trs., 715.)
Case of Spanish slaves, 2 Op., 198, Berrien, (1829.)
177. The Department of State was made the depository, by stipulation, of the records and papers referred to in article 11 of the treaty with Spain of 1819, (Pub. Trs., 716,) and they must not be delivered up to the claimants; and any law of Congress that shall authorize or require their delivery will be a violation of that treaty.
Depository of records, 2 Op., 515, Taney, (1832.)
178. A Spanish vessel having cleared from one Spanish port bound to another, with regular papers and a cargo of merchandise and slaves, and while at sea, being subjected to the control of the negroes on board, by their rising upon the whites and killing the captain, his servant, and two of his seamen, who assuming command with a view to carry the vessel to the coast of Africa, but failing in that object, through the contrivance of two white Spaniards, ran her near to the coast of the United States, where she was taken by a vessel of the United States, and sent into New London for examination and such proceedings as the law of nations warranted and required; and the vessel being demanded, with the negroes, by the Spanish minister, under the ninth article of the treaty with Spain of 1795, (Pub. Trs., 704:) Held, that the case is within said ninth article, and that the vessel and cargo should be restored to the owners, as far as practicable, entire.
The Amistad, 3 Op., 484, Grundy, (1839.)
179. The President is advised to issue his order to the marshal in whose custody the vessel and cargo are, to deliver the same to such persons as may be designated by the Spanish minister to receive them.

180. The power of the Secretary of the Treasury and the necessary proceedings to establish claims under the ninth article of the treaty between the United States and Spain of 1819, (Pub. Trs., 714,) considered at length.

Florida Claims, 6 Op., 533, Cushing, (1854.)

181. The extraordinary expenses of a party, incurred in living at St. Mary's, whither he retired after the destruction of his property in Florida, are matters too remotely consequential to be the proper subject of damages under article 9 of the treaty of 1819 between the United States and Spain. (Pub. Trs., 715.)

Case of a Spanish claimant, 6 Op., 530, Cushing, (1854.)

182. Under the treaty with Spain of 1819, (Pub. Trs., 716,) and the act of 1829, (4 Stat., 359; R. S., § 5280,) the apprehension and delivery of a seaman, who is alleged to be a deserter from a Spanish ship, is a judicial duty, and the State Department cannot change what a judge has done.

Manuel Castro's case, 9 Op., 96 Black, (1857.)

183. The annual installments of interest due to the United States under the convention with Spain of 1834, (Pub. Trs., 718,) may, by virtue of the act of 1862, (12 Stat., 345; R. S., § 3588,) be paid in Treasury notes, if the Spanish government chooses to offer them in payment, there being no express provision in the convention that the money shall be paid in coin.

Interest on Spanish indemnity, 13 Op., 85, Hoar, (1869.)

184. Article 15 of the treaty of 1795, between the United States and Spain, (Pub. Trs., 704,) provides that neutral bottoms shall make neutral goods, but contains no stipulation that enemy bottoms shall communicate hostile character to the cargo. The latter is not to be implied from the insertion of the former rule.

The Nereide, 9 Cranch, 388.

185. Under the treaty with Spain of 1795, (Pub. Trs., 704,) stipulating that free ships shall make free goods, the want of such a sea-letter or passport, or such certificates as are described in article 17, is not a substantive ground of condemnation. It only authorizes capture and sending in for adjudication, and the proprietary interest in the ship may be proved by other equivalent testimony.

The Pizarro, 2 Wheaton, 227.

186. The term "subjects," in article 15, when applied to persons owing allegiance to Spain, must be construed in the same sense as the term "citizens" or "inhabitants" when applied to persons owing allegiance to the United States, and extends to all persons domiciled in the Spanish dominions.

Ib.

187. The capture of a Spanish vessel and cargo, made by a privateer commissioned by the province of Carthagena while it had an organized government and was at war with Spain, cannot be interfered with by the courts of the United States. The treaty with Spain of 1795, article 9, (Pub. Trs., 706) applies to only two cases, piracy and captures in violation of our neutrality, and this is neither of those cases.

The Nuestra Señora de la Caridad, 4 Wheaton, 497.

188. Article 17 of the treaty with Spain of 1795, (Pub. Trs., 709,) so far as it purports to give any effect to passports, is imperfect and inoperative, in consequence of the omission to annex the form of passport to the treaty.

The Amiable Isabella, 6 Wheaton, 1.

189. By the treaty with Spain of 1795, (Pub. Trs., 704,) free ships make free goods; but the form of the passport by which the freedom of the ship was to have been conclusively established never having been annexed to the treaty, the proprietary interest of the ship is to be proved according to the ordinary rules of the prize-court, and if thus shown to be Spanish, will protect the cargo on board, to whomsoever the latter may belong.

It

[NOTE.—The form of passport referred to in article 17 of the treaty of 1795, is not annexed either to the original treaty signed by the negotiators, or to the copy bearing the ratification of the King of Spain on file in the Department of State. It is remarkable, however, that to the Spanish version, appearing in vol. 2, p. 429, of “Coleccion de los Tratados de Paz,” &c., published at Madrid in 1800, two forms of passports in Spanish are annexed—one for ships navigating European seas, and the other for those navigating American seas. These forms are found in 6 Wheaton, 97. No explanation has been discovered of these facts. It is stated, however, in a letter from Jacob Wagner to Mr. Monroe, dated November 3, 1814, that a form was agreed on.]

190. Articles 6 and 14 of the treaty with Spain of 1795, (Pub. Trs., 704,) prohibit a citizen of the United States from taking a commission to cruise against Spanish vessels and property in a privateer, but not in a public armed vessel of a belligerent nation.

The Santissima Trinidad, 7 Wheaton, 283.

191. Under the treaty with Spain of 1819, (Pub. Trs., 712,) the commissioner had power to decide conclusively upon the amount and validity of claims, but not upon the conflicting rights of parties to the sums awarded by them.

Comegys vs. Vasse, 1 Peters, 193.

192. The treaty with Spain, (Pub. Trs., 712,) ceding Florida to the United States, is the law of the land, and admits the inhabitants of Florida to the enjoyment of the privileges, rights, and immunities of citizens of the United States. They do not participate, however, in political power until Florida shall become a State.

American Insurance Company vs. Canter, 1 Peters, 511, [542.]

193. All the laws in force in Florida while a province of Spain, excepting those of a political character, which concerned the relations between the people and their sovereign, remained in force until altered by the Government of the United States.

Ib., [544.]

194. Article 8 of the treaty with Spain of 1819, (Pub. Trs., 712,) taken in connection with article 2, and with the explanatory declaration made by the King of Spain when he ratified the treaty, (Pub. Trs., 717,) does not provide for grants made by the Spanish authorities between the rivers Iberville and Perdido.

Foster vs. Neilson, 2 Peters, 253.

195. Though a treaty is the law of the land, and its provisions must be regarded by courts as equivalent to an act of the legislature when it operates directly on a subject, yet, if it be merely a stipulation for future legislation by Congress, it addresses itself to the political and not to the judicial department, and the latter must await the action of the former.

Ib.

196. The eighth article of the said treaty with Spain does not *proprio vigore* confirm grants; it was reserved for Congress to act and execute it

Ib.

197. By article 8 of the treaty with Spain of 1819 (Pub. Trs., 714) the lands theretofore completely granted by the King were excepted out of the grant to the United States. The original of that treaty in the Spanish language not corresponding precisely with the original in English, the language of the former is to be taken as expressing the intent of the grantor as to the lands granted and reserved. The words "in possession of the lands," in article 8, do not require actual occupancy; they are satisfied by that constructive possession, which is attributed by the law to legal ownership.

United States vs. Arredondo, 6 Peters, 691, [741, 742.]

198. Under article 8 of the treaty with Spain of 1819 (Pub. Trs., 714) the title to lands which had been granted by the King of Spain was confirmed by force of the instrument itself.

United States vs. Percheman, 7 Peters, 51.

199. The validity of concessions of lands, conditional as well as absolute, made by the authorities of Spain in East Florida, is expressly recognized in the treaty of cession. (Pub. Trs., 712.)

United States vs. Clarke, 9 Peters, 168.

200. A treaty of cession is a deed or grant by one sovereign to another, which transfers nothing to which he had no right of property, and only such right as he owned and could convey to the grantee. By the treaty with Spain of 1819 (Pub. Trs., 712) the United States acquired no lands in Florida to which any person had lawfully obtained such a right by a perfect or inchoate title, that this court could consider it as properly under the second article, or which had, according to the stipulations of the eighth, been granted by the lawful authorities of the King; which words, grants, or concessions were to be construed in their broadest sense, so as to comprehend all lawful acts which operated to transfer a right of property, perfect or imperfect.

Mitchell vs. United States, 9 Peters, 734.

201. Results of former adjudications upon Spanish grants, as governed by the treaty with Spain of 1819 (Pub. Trs., 732,) stated.

Id.

202. The practice and usage of the government officers of Spain in relation to title-papers of grants made by Spanish authority in East Florida may be proved by parol.

The originals being kept in a public office, and certified copies furnished to grantees, these copies are evidence.

United States vs. Wiggins, 14 Peters, 334.

203. An official certificate of the secretary of the Spanish government of East Florida is evidence of the title-papers, the original of which were kept in the public archives.

United States vs. Rodman, 15 Peters, 130.

204. An official certificate of the secretary of the Spanish government of East Florida is evidence of the genuineness of a copy of a grant.

United States vs. Delespine, 15 Peters, 226.

205. Under article 9 of the treaty with Spain of 1819, (Pub. Trs., 714,) providing for the restoration of property rescued from pirates and robbers on the high seas, it is necessary to show (1) that what is claimed falls within the description of vessel or merchandise; (2) that it has been rescued on the high seas from pirates and robbers; (3) that the asserted proprietors are the true proprietors, and have established their title by competent proof.

United States vs. The Amistad, 15 Peters, 518.

206. That Spain had power to make grants, founded on any consideration, and subject to any restrictions within her discretion, is a settled question. If the act was binding on that government, so it is on this, as the successor of Spain. All the grants of land made by the lawful authorities of the King of Spain before the 24th of January, 1818, were by the treaty ratified and confirmed to the owners of the lands. Such is the construction given to the eighth article by this court in *Arredondo's case*, 6 Peters, 706, and in *Percheman's case*, 7 Peters, 51; that is, imperfect titles were equally binding on this government after the cession, as they had been on the Spanish government before.

United States vs. Heirs of Clarke and Atkinson, 16 Peters, 231, 232.

207. The original of a grant of land by the Spanish governor of East Florida not being found in the proper depository, a copy certified by the secretary of the Spanish government was held admissible.

United States vs. Acosta, 1 Howard, 24.

208. It is the settled doctrine of the judicial department of the Government that the treaty with Spain of 1819 (Pub. Trs., 714) ceded no territory west of the Perdido River.

Pollard's Lessee vs. Files, 2 Howard, 591, [602.]

209. It cannot be admitted that the King of Spain could, by treaty or otherwise, impart to the United States any of his royal prerogatives; and much less can it be admitted that they have capacity to receive or power to exercise them. Every nation acquiring territory, by treaty or otherwise, must hold it subject to the constitution and laws of its own government, and not according to those of the government ceding it.

Pollard's Lessee vs. Hagan, 3 Howard, 225.

210. The United States have never claimed any part of the territory included in the States of Mississippi or Alabama under any treaty with Spain, although she claimed at different periods a considerable portion of the territory in both of those States. By the treaty between the United States and Spain, signed at San Lorenzo el Real, on the 27th of October, 1795, (Pub. Trs., 704,) the high contracting parties declare and agree that the line between the United States and East and West Florida shall be designated by a line beginning on the Mississippi River at the northernmost part of the thirty-first degree of north latitude, which from thence shall be drawn due east from the middle of the Chattahoochee River, &c. This treaty declares and agrees that the line which was described in the treaty of peace between Great Britain and the United States as their southern boundary shall be the line which divides their territory from East and West

Florida. The article does not import to be a cession of territory, but the adjustment of a controversy between two nations. It is understood as an admission that the right was originally in the United States.

Had Spain considered herself as ceding territory, she could not have neglected to stipulate for the property of the inhabitants—a stipulation which every sentiment of justice and of national honor would have demanded, and which the United States would not have refused.

Ib., (225.)

Hickey's Lessee vs. Stewart, 3 *Howard*, 760.

211. The treaty between the United States and Spain of 1795 (Pub. Trs., 704) ascertained and established an existing but disputed boundary-line, and prior grants made by the authorities of Spain within the territory of Georgia, as ascertained by that treaty, were invalid.

Robinson vs. Minor, 10 *Howard*, 627.

212. The treaty with Spain of 1819 (Pub. Trs., 712) contains the following stipulation in article 9: "The United States shall cause satisfaction to be made for the injuries, if any, which by process of law shall be established to have been suffered by the Spanish officers and individual Spanish inhabitants by the late operations of the American Army in Florida." * * * The treaty certainly created no tribunal by which these damages were to be adjusted, and gives no authority to any court of justice to inquire into or adjust the amount which the United States were to pay to the respective parties who had suffered damage from the causes mentioned in the treaty. It rested with Congress to provide one, according to the treaty stipulation. * * * Undoubtedly Congress was bound to provide such a tribunal as the treaty described. But if they failed to fulfill that promise, it is a question between the United States and Spain.

United States vs. Ferreira, 13 *Howard*, 45, 46.

213. Where one of the parties to a treaty, at the time of its ratification, annexes a written declaration explaining ambiguous language in the instrument, or adding a new and distinct stipulation, and the treaty is afterward ratified by the other party with the declaration attached to it, and the ratification duly exchanged, the declaration thus annexed is a part of the treaty, and as binding and obligatory as if it were inserted in the body of the instrument.

The grant of lands in Florida by the King of Spain to the Duke of Alagon, whether it takes date from the royal order of December 17, 1817, or from the grant of February 6, 1818, is annulled by the treaty between the United States and the King of Spain,

of 1819, (Pub. Trs., 712,) by virtue of the declaration to that effect made by the President of the United States on presenting the treaty for an exchange of ratifications, and assented to by the King in writing, and again ratified by the Senate of the United States.

Doe vs. Braden, 16 Howard, 635.

214. Whether the King of Spain had power to annul a grant is a question which was foreclosed in every judicial tribunal of the United States by the action of the President and Senate treating with him as having that power.

It would be impossible for the executive department of the Government to conduct our foreign relations with any advantage to the country, and fulfill the duties which the Constitution has imposed upon it, if every court in the country was authorized to inquire and decide whether the person who ratified the treaty on behalf of a foreign nation had the power, by its constitution and laws, to make the engagements into which he entered.

Ib.

215. The claims of American citizens against Spain, for which by the convention (subsequently becoming the treaty) of 1819 (Pub. Trs., 712) the United States undertook to make satisfaction to an amount not exceeding \$5,000,000, were such claims as, at the date of the convention, were unliquidated and statements of which had been presented to the Department of State, or to the minister of the United States.

Meade vs. United States, 9 Wallace, 691.

216. The convention, as signed 22d February, 1819, subject to ratification within six months, though it was not ratified within the time stipulated, was never abandoned, though some expressions in the notification of August 21, 1819, by the United States to Spain (notifying to that government that after the next day, "as the ratifications of the convention will not have been exchanged, all the claims and pretensions of the United States will stand in the same situation as if that convention had never been made") indicated that the United States might be induced to carry it into effect.

Ib.

217. The notification did not, by the non-ratification within the six months, make revocable the power which citizens of the United States, by filing their claims with it, had given their Government to make reclamations against Spain in their behalf.

Ib.

218. Under the treaty of cession of Louisiana, made with France of 1803, (Pub. Trs., 232,) the United States Government always

claimed to the Perdido River on the east, although the Spanish authorities kept possession of, and claimed sovereignty over, the territory between that river and the Mississippi, (except the island of New Orleans,) until 1810, when the United States took forcible possession of it.

United States vs. Lynde, 11 Wallace, 632.

219. Spain, in ceding the Floridas to the United States, by the treaty of 1819, only ceded so much thereof as belonged to her, and hence did not cede the above territory, lying between the Mississippi and Perdido Rivers.

Ib.

220. The stipulation in the eighth section of the treaty of 1819 to confirm all Spanish grants of land in the ceded territory did not embrace grants made in the above territory after Spain ceded Louisiana to France by the treaty of Ildefonso in 1801, for after that it did not belong to Spain.

Ib.

SWEDEN AND NORWAY.

221. By virtue of article 2 of the treaty with Sweden of 1783 (Pub. Trs., 722,) and articles 8 and 17 of the treaty with Sweden and Norway of 1827, (Pub. Trs., 738 and 741,) the provisions of article 4 of the treaty with Belgium, of 1858, (Pub. Trs., 53,) exempting steam-vessels of the United States and Belgium, engaged in regular navigation between their respective countries, from the payment of duties of tonnage, anchorage, buoys, and light-houses, became immediately applicable, *mutatis mutandis*, to steam-navigation between the United States and Sweden and Norway.

Norse American line of steamers, 14 Op., 468, Williams, (1874.)

SWITZERLAND.

222. Under the convention for extradition between the United States and Switzerland (Pub. Trs., 748,) it is sufficient if the crime be subject to infamous punishment where it was committed.

In re François Farez, 7 Blatchford, 345.

223. Article 1 of the treaty of 1850, (Pub. Trs., 748,) providing that citizens of the United States shall be at liberty to prosecute and defend their rights before courts of justice in Switzerland in the same manner as native citizens; gives the right to maintain an action against the Government as such right is given to citizens of Switzerland.

Lobsiger's case, 5 C. Cls., 687.

WÜRTEMBERG.

224. Article 3 of the treaty with Würtemberg of 1844 (Pub. Trs., 809) does not include the case of a citizen of the United States dying at home and disposing of property within the State of which he was a citizen and in which he died.

Frederickson vs. State of Louisiana, 23 Howard, 445.

TRIPOLI.

See *Exterritoriality*.

TUNIS.

See *Exterritoriality*.

VESSELS.

See *American vessels*.

National character.

Penalties and forfeitures.

VESSELS OF THE UNITED STATES.

See *American vessels*.

Virginus, (steamer.)

VICE-CONSULS.

See *Consular officers*.

VIRGINIUS, (Steamer.)

1. The papers presented by the Secretary of State in the case of this steamer do not establish any violation of the neutrality laws, either by the owners of the steamer or by the persons engaged thereon.

The Virginus, 14 Op., 49, Bristow, acting, (1872.)

2. Under the provisions of the first and fourth sections of the act of 1792, (1 Stat., 287; R. S., §§ 4131, 4142,) no vessel in which a foreigner is directly or indirectly interested can lawfully be registered as a vessel of the United States, nor can it be deemed a vessel of the United States, or entitled to the benefits or privileges appertaining to a vessel of that description.

The Virginus, 14 Op., 340, Williams, (1873.)

3. So, where a vessel has been registered, but the registry was obtained by a false oath as to its ownership, the vessel being at the time owned in whole or in part by foreigners, it cannot be deemed a vessel of the United States.
Ib.
4. *Semble*, that the *Virginus*, though registered as an American vessel was in fact owned by foreigners, and that the registry thereof was fraudulently obtained; and hence, at the time of her capture by the Spanish man-of-war *Tornado*, she had no right, by virtue of that registry, as against the United States, to carry the American flag.
Ib.
5. Yet, while upon the high seas, actually bearing an American register and carrying an American flag, she was as much exempt from interference by another power as though she had been lawfully registered; the question whether or not her register was fraudulently obtained, or whether or not she was sailing in violation of any law of the United States, being one over which such power could not then and there rightfully exercise jurisdiction.
Ib.

VISITATION AND SEARCH.

1. When a vessel interrogated at sea answers either in words or by hoisting her flag, the response must be taken for true, and she must be allowed to keep her way; the interrogator cannot stop her, to verify it by visitation, search, or otherwise.
General Miramon and Marquis de la Habana, 9 *Op.*, 455, *Black*, (1860.)
2. A cruiser of one nation has a right to know the national character of any strange ship she may meet at sea, but the right is not a perfect one, and the violation of it cannot be punished by capture and condemnation, nor even by detention.
Ib.
3. The party making the inquiry must raise his own colors, or in some other way make himself fully known, before he can lawfully demand such knowledge from the other vessel.
Ib.
4. If this is refused, the inquiring vessel may fire a blank shot, and in case of further delay a shotted gun may be fired across the bows of the delinquent.
Ib.

5. Any measure beyond this, which the commander of an armed ship may take for the purpose of ascertaining the nationality of another vessel, must be at his peril.

Id.

6. This right of inquiry can be exercised only on the high seas, and no naval officer has the right to go into the harbor of a nation with which his government is at peace to inquire into the nationality of a vessel which is lying there.

Id.

7. It is well known that a vessel libeled as enemy's property is condemned as prize if she act in such a manner as to forfeit the protection to which she is entitled by her neutral character. If, for example, a search be resisted, or an attempt be made to enter a blockaded port, the laws of war, as exercised by belligerents, authorize a condemnation as enemy's property, however clearly it may be proved that the vessel is in truth the vessel of a friend.

Maley vs. Shattuck, 3 *Cranch*, 488.

8. The right of search is not a right wantonly to vex or control neutral commerce, or indulge in idle curiosity. It is a right growing out of, and ancillary to, the greater right of capture, and can never arise except as a means to that end.

The Nereide, 9 *Cranch*, 388, (427.)

9. The right of visitation and search is a belligerent right which cannot be drawn into question, but must be conducted with as much regard to the safety of the vessel detained as is consistent with a thorough examination of her character and voyage.

The Anna Maria, 2 *Wheaton*, 327.

10. To detain for examination is a right which a belligerent may exercise over every vessel, except a national vessel, which he meets with on the ocean.

The principal right necessarily carries with it all the means essential to its exercise; among these may sometimes be included the assumption of the disguise of a friend or an enemy, which is lawful stratagem of war.

The Eleanor, 2 *Wheaton*, 345.

11. The African slave-trade is not contrary to the law of nations.

The Antelope, 10 *Wheaton*, 66.

12. The right of search is a belligerent right only.

Id.

13. One nation cannot execute the penal laws of another, and, consequently, a foreign vessel engaged in the slave-trade cannot lawfully be captured by an American cruiser.

Id.

14. Though the right of search of foreign vessels does not exist in time of peace, yet a cruiser has a right to approach for purposes of observation.

The Marianna Flora, 11 Wheaton, 1.

15. The vessel approached is under no obligation to lie by, but neither has she a right to fire at a cruiser approaching upon a mere conjecture that she is a pirate, and if this be done the cruiser may lawfully repel force by force and capture her.

Ib.

16. There is no obligation to affirm a flag with a gun by an American cruiser in time of peace.

Ib.

17. A vessel and cargo, even when perhaps owned by neutrals, may be condemned as enemy property because of the employment of the vessel in enemy trade, and because of an attempt to violate a blockade and to elude visitation and search.

The Baigorry, 2 Wallace, 474.

WAR.

See *Maritime War*.

1. What constitutes a modified state of war considered, in reference to the hostilities between France and the United States in 1799.

Bas vs. Tingy, 4 Dallas, 37.

2. Congress may authorize general hostilities, in which case the general laws of war apply to our situation, or partial hostilities, in which case the laws of war, so far as they actually apply to our situation, must be noticed.

• *Talbot vs. Seeman*, 1 Cranch, 1, (28.)

3. A state of actual war may exist without any formal declaration of it by either party; and this is true of both a civil and a foreign war.

Prize Cases, 2 Black, 635.

4. A sale by a belligerent of a war-ship to a neutral in a neutral port is invalid by the law of nations, as construed both in England and America.

The Georgia, 1 Lowell, 96.

5. War puts every individual of the respective governments, as well as the governments themselves, in a state of hostility with each other. All treaties, contracts, and rights of property are suspended. The subjects are in all respects considered as enemies. They may seize the persons and property of each other. They have

no *persona standi in judicio*, no power to sue in the public courts of the enemy nation. It becomes in the highest degree criminal to comfort or aid the enemy.

The Schooner Rapid and cargo, 1 *Gallison*, 303.

6. Of the right of the sovereign power of a country to require the services of all its citizens in time of war.

The Joseph, 1 *Gallison*, 545.

7. On a declaration of war, the citizens are not bound to return from foreign countries, unless so ordered by the Government.

Ib.

8. Upon a declaration of war the President has an authority, as incident to his office, to employ all the usual and customary means, acknowledged by the law of nations, to carry it into effect.

Cargo of Ship Emulous, 1 *Gallison*, 563.

9. The United States may be engaged in war, and have all the rights of a belligerent, without any declaration by Congress.

The Amy Warwick, 2 *Sprague*, 123.

WARRANTS.

See *Extradition*.

Neutrality.

Treaties.

ABBREVIATIONS.

In citing authorities the following abbreviations are made in the table :

Report.	Abbreviation.	Report.	Abbreviation.
Abbott's United States....	Abbott U. S.	Lowell.....	Low.
Baldwin.....	Bald.	Newberry's Admiralty	Newb. Adm.
Bee's Admiralty.....	Bee's Adm.	Opinions of the Attorneys- General	Op.
Benedict.....	Bened.	Peters	Pet.
Blatchford	Blatch.	Peters's Admiralty	Pet. Adm.
Blatchford & Howland	Bl. & How.	Peters's Circuit Court.....	Pet. C. C.
Blatchford's Prize Cases ...	Blatch. Pr. C.	Sergeant & Rawle.....	Sergt. & R.
Brockenbrough.....	Brock.	Taney's Decisions.....	Taney's Dec.
Clifford	Cliff.	United States Reports, S. C.	U. S. R., S. C.
Court of Claims	Ct. of Cla.	Wallace	Wall.
Cranoh	Cr.	Wallace, Jr	Wall., Jr.
Dallas	Dall.	Wharton's State Trials.....	Whar. St. Tr.
Gallison	Gall.	Wheaton	Wh.
Gilpin	Gil.	Woodbury & Minot.....	Wood. & M.
Howard.....	How.		269

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